

COLORADO REVISED STATUTES



TITLES 33-36

2012



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Colorado

Revised Statutes

2012

Titles 33-36
Parks and Wildlife
Mineral Resources
Agriculture
Natural Resources — General



Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

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*Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado*

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COLORADO REVISED STATUTES**

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**CERTIFICATION
OF
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The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Titles 33 to 35	1975-83 Supplements	1984 Replacement Volume 1985-94 Supplements 1995 Replacement Volume 1996 Supplement
Title 36	1975-89 Supplements	1990 Replacement Volume 1991-96 Supplements

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor's proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

TITLE 33

PARKS AND WILDLIFE

1871

1871

TITLE 33

PARKS AND WILDLIFE

WILDLIFE

- Art. 1. Wildlife - General Provisions, 33-1-101 to 33-1-124.
- Art. 2. Nongame and Endangered Species Conservation, 33-2-101 to 33-2-108.
- Art. 3. Damage by Wildlife, 33-3-101 to 33-3-204.
- Art. 4. Licenses, Certificates, and Fees, 33-4-101 to 33-4-120.
- Art. 5. Protection of Fishing Streams, 33-5-101 to 33-5-107.
- Art. 5.5. Fish Health Board, 33-5.5-101 and 33-5.5-102.
- Art. 6. Law Enforcement and Penalties - Wildlife, 33-6-101 to 33-6-209.
- Art. 7. Snowmobiles (Repealed).
- Art. 8. Nongame, Endangered, or Threatened Species Conservation (Repealed).

ADMINISTRATION

- Art. 9. Administration of Parks and Wildlife, 33-9-101 to 33-9-109.

PARKS

- Art. 10. Parks - General Provisions, 33-10-101 to 33-10-115.
- Art. 10.5. Aquatic Nuisance Species, 33-10.5-101 to 33-10.5-108.
- Art. 11. Recreational Trails, 33-11-101 to 33-11-112.
- Art. 12. Passes and Registrations, 33-12-100.2 to 33-12-107.
- Art. 12.5. Arkansas River Recreational Act, 33-12.5-101 to 33-12.5-105.
- Art. 13. Vessels, 33-13-101 to 33-13-116.
- Art. 14. Snowmobiles, 33-14-101 to 33-14-120.
- Art. 14.5. Off-highway Vehicles, 33-14.5-101 to 33-14.5-113.
- Art. 15. Law Enforcement and Penalties - Parks and Outdoor Recreation, 33-15-101 to 33-15-114.

WILDLIFE - Continued

- Art. 20. Birds - Hunting Dogs (Repealed).
- Art. 21. Fishing (Repealed).
- Art. 22. Furbearers and Trapping (Repealed).
- Art. 23. Outfitters, Guides, and Assistant Guides (Repealed).

OUTDOOR RECREATION

- Art. 30. Division of Parks and Outdoor Recreation (Repealed).
- Art. 31. Vessels (Repealed).
- Art. 32. River Outfitters, 33-32-101 to 33-32-112.

COLORADO NATURAL AREAS

- Art. 33. Colorado Natural Areas, 33-33-101 to 33-33-113.

RECREATIONAL AREAS AND SKI SAFETY

- Art. 40. Parks and Fishing and Hunting Areas (Repealed).
- Art. 41. Owners of Recreational Areas - Liability, 33-41-101 to 33-41-106.
- Art. 42. Recreational Trails (Repealed).
- Art. 43. Registration of Recreational Vehicles (Repealed).
- Art. 44. Ski Safety and Liability, 33-44-101 to 33-44-114.

GREAT OUTDOORS PROGRAM

Art. 60. Great Outdoors Colorado Program - Implementation, 33-60-101 to 33-60-114.

WILDLIFE

ARTICLE 1

Wildlife - General Provisions

Editor's note: (1) Section 33-10-102 (5) provides that the term "division" as used in articles 10 to 15 of this title means the division of parks and wildlife.

(2) This article was numbered as article 1 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1984 with an effective date of January 1, 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

33-1-101.	Legislative declaration.		of raptors - reciprocal agreements.
33-1-102.	Definitions.		
33-1-103.	Wildlife commission - wildlife division - enterprise status. (Repealed)	33-1-116.	Powers of director of United States fish and wildlife service.
33-1-104.	General duties of commission.	33-1-117.	Assent of state to Pittman-Robertson act.
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33-1-105.5.	Acquisition of property - procedure.	33-1-119.	Federal aid projects income fund.
33-1-106.	Authority to regulate taking, possession, and use of wildlife - rules.	33-1-120.	Limitation on division and commission authority.
33-1-107.	Regulation of areas under wildlife commission control.	33-1-120.5.	Oversight of the division - target dates for implementation of management review recommendations.
33-1-108.	Rule-making procedure - judicial notice of rules.		
33-1-109.	Office of director of division created. (Repealed)	33-1-121.	Captive wildlife and alternative livestock board - created - duties - repeal. (Repealed)
33-1-110.	Duties of the director of the division.		
33-1-111.	Hearings - administrative law judges.	33-1-122.	Wildlife legislative interim committee. (Repealed)
33-1-112.	Funds and cost accounting - repeal.	33-1-123.	Division - predator management plan - predator management advisory committee - creation - repeal. (Repealed)
33-1-112.5.	Search and rescue fund.		
33-1-113.	Expenses of employees.		
33-1-114.	Conservation magazine - revenue - Colorado outdoors magazine revolving fund.	33-1-124.	Revenue bonds - authority - issuance - requirements - covenants.
33-1-115.	Migratory birds - possession		

33-1-101. Legislative declaration. (1) It is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors. It is further declared to be the policy of this state that there shall be provided a comprehensive program designed to offer the greatest possible variety of wildlife-related recreational opportunity to the people of this state and its visitors and that, to carry out such program and policy, there shall be a continuous operation of planning, acquisition, and development of wildlife habitats and facilities for wildlife-related opportunities.

(2) All wildlife within this state not lawfully acquired and held by private ownership is declared to be the property of this state. Right, title, interest, acquisition, transfer, sale, importation, exportation, release, donation, or possession of wildlife is permitted only as provided in articles 1 to 6 of this title or in any rule of the parks and wildlife commission.

(3) In order to foster the welfare of the inhabitants of the state of Colorado, it is further declared to be the policy of this state to protect and encourage full development of absolute and conditional water rights created under state law and to develop and maximize the beneficial use of the waters to which Colorado and its citizens are entitled under interstate compacts.

(3.5) (a) The general assembly hereby finds, determines, and declares that it supports the recommendation of the Lower Arkansas river commission in its plan dated March 25, 1993, to protect and enhance fish and wildlife resources at the Great Plains Reservoirs, and further finds that a joint funding effort, which includes funds appropriated from the wildlife cash fund created in section 33-1-112 to carry out such recommendation, would further the public interest by establishing recreational opportunities in southeastern Colorado.

(b) The general assembly further declares that the joint funding effort described in paragraph (a) of this subsection (3.5) shall not be solely a division responsibility and that the appropriation from the wildlife cash fund shall be used to maximize matching funds from other sources to ensure full implementation of the recommendation.

(4) The state shall utilize hunting, trapping, and fishing as the primary methods of effecting necessary wildlife harvests.

(5) The general assembly declares that it is the policy of the state to prosecute hunters who violate multiple provisions of this title for each violation that contains unique elements.

Source: L. 84: Entire article R&RE, p. 848, § 1, effective January 1, 1985. L. 93: (3.5) added, p. 2116, § 1, effective June 11. L. 2003: (5) added, p. 1028, § 1, effective July 1. L. 2012: (2) amended, (HB 12-1317), ch. 248, p. 1207, § 14, effective June 4.

Editor's note: This section is similar to former §§ 33-1-101 and 33-1-104 as they existed prior to 1984.

ANNOTATION

Law reviews. For note, "Are Colorado Game Preserve Laws Local Legislation?", see 1 Rocky Mt. L. Rev. 136 (1929).

Ownership of wild game is in state for use of all people, and the exercise of police power to protect game for the benefit of its citizens is not only the right, but the duty of the state. *Maitland v. People*, 93 Colo. 59, 23 P.2d 116 (1933).

But state not liable for crop damage by wild geese. Landowners unquestionably possess cognizable property interest in their crops and residues but it does not follow that mere state ownership of wild game exposes it to liability for crop losses caused by wild geese. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

Right to hunt wild game upon one's own land is not property right enforceable against state under § 15 of art. II, Colo. Const. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

Commission authorized to close hunting season. There is no doubt that the wildlife commission possesses the statutory authority to close the hunting season on a species of game in

a specific locality to assure maintenance of an adequate supply, and to protect and enhance the game population for the use, benefit, and enjoyment of residents and visitors; these objectives are within the purview of the state's police power. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

Right to capture or kill exists only as permitted by statute. The statutes of Colorado vest the ownership of game in the state as a proprietor, and take away the "right to capture and kill unless prohibited" as it existed at common law, leaving under these statutes no right to capture and kill, except as permitted. *Hornbeke v. White*, 20 Colo. App. 13, 76 P. 926 (1904); *Hartman v. Tresise*, 36 Colo. 146, 84 P. 685, 4 L.R.A. (n.s.) 872 (1906) (concurring opinion); *People v. Johnson*, 38 Colo. 78, 88 P. 184 (1906); *People v. Williams*, 61 Colo. 11, 155 P. 323 (1916).

Applied in *Atkinson v. City & County of Denver*, 118 Colo. 322, 195 P.2d 977 (1948); *Farmers Irrigation Co. v. Game & Fish Comm'n*, 149 Colo. 318, 369 P.2d 557 (1962).

33-1-102. Definitions. As used in this title, unless the context otherwise requires:

- (1) "Antler point" means a projection of an antler that is at least one inch long and longer than the width of the base of such projection.
- (1.5) "Bag limit" means the maximum amount, expressed in numbers, of wildlife that may be lawfully taken, caught, killed, or possessed by a person during one day or other specified period of time.
- (2) "Big game" means elk, white-tailed deer, mule deer, moose, rocky mountain bighorn sheep, desert bighorn sheep, rocky mountain goat, pronghorn antelope, black bear, mountain lion, and all species of large mammals that may be introduced or transplanted into this state for hunting or are classified as big game by the commission.
- (2.5) Repealed.
- (3) "Carcass" means the dead body of any wildlife or a portion thereof.
- (4) "Carcass tag" or "tag" means that portion of the license or separate identification which is required by statute or by rule or regulation of the commission to be attached to a wildlife carcass as evidence of lawful possession.
- (4.3) "Colorado wildlife officer" means an employee of the division of parks and wildlife, or any other person who is commissioned by the director to enforce the wildlife statutes and rules of the commission and all laws of the state of Colorado, who is recognized as a peace officer in section 16-2.5-116, C.R.S.
- (4.5) "Commercial wildlife park" means a privately owned wildlife park, containing lawfully acquired captive wildlife, on which wildlife are exhibited for educational, commercial, or promotional purposes.
- (5) "Commission" or "parks and wildlife commission" means the parks and wildlife commission created in section 33-9-101.
- (6) "Commissioner" means a member of the parks and wildlife commission.
- (6.4) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a weapon, including, but not limited to, firearms or archery equipment, at wildlife while the person engaged in the action is not physically present with, or in the immediate vicinity of, the wildlife.
- (6.5) "Computer-assisted remote hunting facilities" means real property and improvements on the property associated with computer-assisted remote hunting. "Computer-assisted remote hunting facilities" also includes, but is not limited to, hunting blinds, weapons, offices, and rooms, equipped to facilitate computer-assisted remote hunting.
- (7) "Department" means the department of natural resources.
- (8) "Director" means the director of the division of parks and wildlife.
- (9) (Deleted by amendment, L. 2003, p. 1629, § 64, effective August 6, 2003.)
- (10) "Division" means the division of parks and wildlife and its employees, and, when necessary, the term may be construed as referring to the parks and wildlife commission.
- (11) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.
- (12) "Endangered species" means any species or subspecies of native wildlife whose prospects for survival or recruitment within this state are in jeopardy as determined by the commission.
- (13) "Executive director" means the executive director of the department of natural resources.
- (13.5) "Exotic aquatic species" means those species, subspecies, and hybrids of fish, mollusks, crustaceans, aquatic reptiles, and aquatic amphibians not originating naturally, either presently or historically, in Colorado and not currently found in the drainage in question, except those which have been classified as native wildlife by the commission.
- (14) "Export" means to transport any wildlife, or part of wildlife, out of this state.
- (15) "Falconry" means the sport of hunting or taking quarry with a trained raptor.
- (16) "Fishing" means any effort made to take any fish, amphibian, crustacean, or mollusk.
- (17) "Furbearers" means those species with fur having commercial value and which provide opportunities for sport harvest, including badger, gray fox, kit fox, swift fox, opossum, hog-nosed skunk, spotted skunk, striped skunk, beaver, marten, mink, muskrat,

ringtail, long-tailed weasel, short-tailed weasel, coyote, bobcat, red fox, and raccoon and all species of furbearers that may be introduced or transplanted into this state for commercial fur value and are classified as furbearers by the commission.

(18) "Game amphibian" means those species or subspecies of the class Amphibia classified as game amphibians by the commission.

(19) "Game crustacean" means those species or subspecies of the class Crustacea classified as game crustaceans by the commission.

(20) "Game fish" means all species of fish which currently exist or may be introduced or transplanted into this state for sport or profit and which are classified as game fish by the commission.

(21) "Game management unit" means a geographic area designated by the commission for the management of wildlife.

(22) "Game mollusk" means those species or subspecies of the phylum Mollusca classified as game mollusks by the commission.

(23) "Game wildlife" means those wildlife species which may be lawfully hunted or taken for food, sport, or profit and which are classified as game wildlife by the commission.

(24) "Harass" means to unlawfully endanger, worry, impede, annoy, pursue, disturb, molest, rally, concentrate, harry, chase, drive, herd, or torment wildlife.

(25) "Hours" means the designated period of the day or night when wildlife may be hunted or taken lawfully.

(25.5) "Hunt" means to pursue, attract, stalk, lie in wait for, or attempt to shoot, wound, kill, trap, capture, collect, or take wildlife. "Hunt" does not include stalking, attracting, searching, or lying in wait for wildlife by an unarmed person solely for the purpose of watching or taking photographs of wildlife.

(26) "Import" means to bring or introduce into or to attempt to bring or introduce into this state any native or nonnative or exotic wildlife.

(27) "License" means a permit, stamp, card, certificate, tag, seal, or other document provided for by statute or commission rule or regulation and issued or required by the division authorizing the hunting, fishing, trapping, taking, transportation, or possession of wildlife or other activity for which express authorization is required by articles 1 to 6 of this title.

(27.5) "Low-income senior" refers to an individual sixty-four years of age or older who shows proof of such fact to the division or license agent and who shows proof to the division or license agent in the form of a federal or state income tax return from the immediately preceding calendar year that the federal taxable income of any such individual is at or below one hundred percent of the official poverty line for an individual or a family, as appropriate to the applicant, defined by the federal office of management and budget based on federal bureau of the census data. If said tax return is not available, a return for the year immediately preceding such year shall suffice. The division shall, for purposes of this subsection (27.5), inform license agents of the most current official poverty line in effect. If a person's income is at a level where such person is not required to file an income tax return, such individual shall sign a statement under penalty of perjury in the second degree to such effect, which statement shall be prescribed by the division and kept as required by the division with the record of sale of any license pursuant to section 33-4-102 (1.4) (v). No such affidavit shall be required to be notarized.

(28) "Motor vehicle" means a self-propelled vehicle, or a vehicle drawn by a self-propelled vehicle, by which persons or property may be moved, carried, or transported from one place to another by land or air.

(28.5) "Native wildlife" means those species and subspecies of wildlife which have originated naturally, either presently or historically, in Colorado; those which have been introduced into the wild in Colorado by the division; and those which have been classified as native wildlife by the commission.

(29) "Nongame wildlife" means all native species and subspecies of wildlife which are not classified as game wildlife by rule or regulation of the commission.

(29.5) "Nonnative wildlife" or "exotic wildlife" means those species, subspecies, and hybrids of wildlife not originating naturally, either presently or historically, in Colorado,

except those which have been introduced into the wild in Colorado by the division or classified as native wildlife by the commission.

(30) "Nonresident" means any person who is not a resident of this state.

(31) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(32) "Peace officer" means a sheriff, undersheriff, deputy sheriff, police officer, Colorado state patrol officer, or town marshal; a district attorney, assistant district attorney, deputy district attorney, or special deputy district attorney; an authorized investigator of a district attorney; an agent of the Colorado bureau of investigation; a Colorado wildlife officer or special wildlife officer; or a parks and recreation officer.

(33) "Person" means any individual, association, partnership, or public or private corporation, any municipal corporation, county, city, city and county, or other political subdivision of the state, or any other public or private organization of any character.

(34) "Possession" means either actual or constructive possession of or any control over the object referred to.

(35) "Possession limit" means the maximum amount, expressed in numbers, of wildlife which may be lawfully possessed by any one person at any particular time.

(36) "Public road" means the traveled portion and the shoulders on each side of any road maintained for public travel by a county, city, or city and county, the state, or the United States government and includes all structures within the limits of the right-of-way of any such road.

(37) "Raptor" means all birds that are members of the order of Falconiformes or Strigiformes and, specifically, but not by way of limitation, means falcons, hawks, owls, and eagles or such other birds classified as raptors by the commission.

(38) (a) "Resident" means any person who has lived in this state for six consecutive months or more immediately preceding the date of application for or purchase of any license required under the provisions of articles 1 to 6 of this title or rules or regulations of the commission.

(b) The burden of establishing residence shall be on the person claiming such status at the time of application for a license. No person is entitled to claim multiple states of residence except as provided in paragraphs (c) and (d) of this subsection (38). The following evidence or any other reliable evidence may be used in establishing, but is not necessarily determinative of, residence:

(I) The residence of a person is the principal or primary home or place of abode of a person. A principal or primary home or place of abode is that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A residence is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. No rental property, vacant lot, vacant house or cabin, or premises used solely for business shall be considered a residence.

(II) In determining the principal or primary place of abode, the following circumstances relating to the person may be taken into account: Business pursuits, place of employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences outside of Colorado and the amount of time spent at each such residence, and any motor vehicle or vessel registration.

(II.3) The residence address given for purposes of purchasing or obtaining licenses issued under this title shall be the same as the address given for Colorado state income tax purposes.

(II.6) A person shall not be considered to have gained resident status while retaining a domicile outside this state.

(III) In determining whether the principal or primary place of abode is in Colorado, the following documents may be taken into account: A current driver's license with address, recent property tax receipts, copies of recent resident income tax returns, current voter

registration cards, current motor vehicle or vessel registrations, and other public records evidencing place of abode or employment.

(c) A person who is a resident of this state does not terminate residency upon entering the armed services of the United States. A member of the armed services on active duty who resided in Colorado at the time the person entered military service and the person's dependents are presumed to retain their status as residents of Colorado throughout the member's active duty in the service, regardless of where stationed or for how long or of the factors listed in paragraph (e) of this subsection (38), unless the member changes his or her home of record to some state other than Colorado or fails to comply with the requirements established by article 22 of title 39, C.R.S., and rules promulgated by the department of revenue concerning the filing of a Colorado income tax return.

(d) For the purposes of this subsection (38), the following shall also be deemed residents of this state:

(I) Members of the armed services of the United States or any nation allied with the United States who are on active duty in this state under permanent orders and their dependents;

(II) Personnel in the diplomatic service of any nation recognized by the United States who are assigned to duty in this state and their dependents;

(III) Full-time students who are enrolled in and have been attending any accredited trade school, college, or university in this state for at least six months immediately prior to the date of application for any license. For the purposes of this subparagraph (III), the spouse and dependent children of any such student shall also be considered residents. The temporary absence of such student or the student's spouse or dependent children from this state while the student is still enrolled at any such trade school, college, or university shall not be deemed to terminate their residency. A student shall be deemed "full-time" if considered full-time under the rules or policy of the educational institution he or she is attending.

(IV) Colorado residents who attend school full-time out of state and pay nonresident tuition unless exempted from such tuition payments by the trade school, college, or university.

(d.5) The residency status of children under eighteen years of age is presumed to be that of the parent with whom the child resides the majority of the time pursuant to court order or legal guardian.

(e) Except as provided in paragraph (c), (d), or (d.5) of this subsection (38), a person is deemed, for the purposes of this title, to have terminated his or her Colorado residence if the person applies for, purchases, or accepts a resident hunting, fishing, or trapping license issued by another state or foreign country; registers to vote in another state or foreign country; or accepts a driver's license that shows an address other than in Colorado.

(f) If a person moves to any other state or foreign country with the intention of making it the person's permanent residence, the person shall be considered to have lost his or her residence in Colorado.

(39) "Season" means the period of time during which wildlife may be legally hunted or taken.

(40) "Sell" includes bartering, exchanging, trading, or giving or offering a gift and each such transaction made by any person whether as principal proprietor, agent, servant, or employee with or without remuneration.

(41) "Small game" means: Game birds, including grouse, ptarmigan, pheasant, quail, partridge, wild turkey, wild ducks, wild geese, sora and Virginia rails, coot, sandhill cranes, snipe, mergansers, band-tailed pigeons, doves, and crow; game mammals, including cottontail rabbit, snowshoe hare, fox squirrel, pine squirrel, Abert's squirrel, jackrabbits, marmot, and prairie dogs; and all species of small mammals and birds that may be introduced or transplanted into this state for hunting or are classified as small game by the commission.

(42) "State wildlife area" means all lands and waters, excluding offices, warehouses, and fish hatcheries, held by the division in fee title or by lease, easement, or agreement for the benefit of wildlife populations or for wildlife-related recreation.

(43) “Take” means to acquire possession of wildlife; but such term shall not include the accidental wounding or killing of wildlife by a motor vehicle, vessel, or train.

(44) “Threatened species” means any species or subspecies of wildlife which, as determined by the commission, is not in immediate jeopardy of extinction but is vulnerable because it exists in such small numbers or is so extremely restricted throughout all or a significant portion of its range that it may become endangered.

(45) “Transfer” means to pass, deliver, convey, receive, or hand over any license issued under articles 1 to 6 of this title from one person to another or to intentionally allow such a license to come into the possession of a person other than the person for whom it was originally procured.

(46) “Transport” means to ship, carry, convey, or transfer from one place to another and includes an offer to transport and the receipt or possession for transportation.

(47) “Trap” means any mechanical device, snare, deadfall, pit, or other device used for catching wildlife.

(48) “Trapping” means taking or attempting to take wildlife by the use of a trap.

(49) “Vessel” means every description of watercraft used or capable of being used as a means of transportation of persons or property on water.

(50) “Waters of the state” means any natural streams, reservoirs, and lakes within the territorial limits of the state of Colorado.

(51) “Wildlife” means wild vertebrates, mollusks, and crustaceans, whether alive or dead, including any part, product, egg, or offspring thereof, that exist as a species in a natural wild state in their place of origin, presently or historically, except those species determined to be domestic animals by rule or regulation by the commission and the state agricultural commission. Such determination within this statute shall not affect other statutes or court decisions determining injury to persons or damage to property which depend on the classification of animals by such statute or court decision as wild or domestic animals.

(52) “Wildlife sanctuary” means a place of refuge where a nonprofit entity, as defined in section 7-90-102 (40), C.R.S., provides care for abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wildlife for their lifetime and, with respect to any wildlife owned by such entity, does not:

(a) Use the animal for any type of entertainment;

(b) Sell, trade, or barter the animal or the animal’s body parts, except as authorized by rule promulgated by the commission; or

(c) Breed the animal.

Source: L. 84: Entire article R&RE, p. 849, § 1, effective January 1, 1985. L. 90: (26) and (51) amended and (28.5) and (29.5) added, p. 1527, § 1, effective July 1. L. 91: (13.5) added, p. 196, § 2, effective June 7. L. 93: (27.5) added, p. 430, § 1, effective April 19. L. 94: (4), (23), (25), (27), (38), (39), (43), and (45) amended and (4.5) and (25.5) added, p. 1574, § 1, effective May 31. L. 96: (40) amended, p. 1844, § 14, effective July 1. L. 98: (38)(d.5) amended, p. 1415, § 84, effective February 1, 1999. L. 2003: (1), (2), (28), and (38)(e) amended and (1.5) added, p. 1030, § 6, effective July 1; (4.3) added and (9) and (32) amended, p. 1629, § 64, effective August 6; (4.3) amended, p. 1955, § 52, effective August 6. L. 2004: (52) added, p. 1323, § 1, effective August 4. L. 2007: (38)(c) and (38)(e) amended, p. 585, § 1, effective April 19. L. 2008: (6.4) and (6.5) added, p. 282, § 1, effective August 5. L. 2011: (2.5) added and (5), (8), and (10) amended, (SB 11-208), ch. 293, p. 1383, § 6, effective July 1. L. 2012: (2.5) repealed and (4.3), (5), (6), and (10) amended, (HB 12-1317), ch. 248, p. 1207, § 15, effective June 4.

Editor’s note: This section is similar to former § 33-1-102 as it existed prior to 1984.

ANNOTATION

There was ample evidence to support the trial court’s finding that defendant’s animals were “nonnative wildlife” or “exotic wild-

life” and were subject to the rules of the division of wildlife. The determination of the trial court regarding the red deer, Barbary sheep, ibex

goats, and hybrids thereof owned by the defendants will not be disturbed on review. Colo. Div. of Wildlife v. Cox, 843 P.2d 662 (Colo. App. 1992).

33-1-103. Wildlife commission - wildlife division - enterprise status. (Repealed)

Source: **L. 84:** Entire article R&RE, p. 854, § 1, effective January 1, 1985. **L. 87:** (1) R&RE, (2)(c) and (2)(d) amended, (2)(e) added, and (3) repealed, pp. 1264, 1265, §§ 1, 2, 3, effective June 16. **L. 89, 1st Ex. Sess.:** (2)(d) and (2)(e) amended, p. 50, § 1, effective July 11. **L. 99:** (1)(b), (6), (7), and (9) amended and (10) added, p. 605, § 1, effective January 1, 2000. **L. 2001:** (9.5) added, p. 202, § 1, effective July 1. **L. 2002:** (1)(b) and (5) amended, p. 559, § 1, effective May 24. **L. 2011:** Entire section repealed, (SB 11-208), ch. 293, p. 1384, § 7, effective July 1.

Editor's note: This section was similar to former §§ 33-1-106 and 33-1-107 as they existed prior to 1984.

33-1-104. General duties of commission. (1) The commission is responsible for all wildlife management, for licensing requirements, and for the promulgation of rules, regulations, and orders concerning wildlife programs.

(2) The commission shall establish objectives within the state policy, as set forth in section 33-1-101, which will enable the division to develop, manage, and maintain sound programs of hunting, fishing, trapping, and other wildlife-related outdoor recreational activities. Such objectives shall employ a multiple-use concept of management.

(3) The commission shall report to the executive director at such times and on such matters as the executive director may require. Publications of the commission circulated in quantity outside the division shall be subject to the approval and control of the executive director.

(4) Whenever the commission receives a dollar amount certification from the board of county commissioners of an eligible county pursuant to part 3 of article 25 of title 30, C.R.S., it shall review such certification, determine the amount to be certified to the general assembly, and certify said amounts pursuant to part 3 of article 25 of title 30, C.R.S.

(5) The commission may coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop wildlife conservation and management plans consistent with this title for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712.

Source: **L. 84:** Entire article R&RE, p. 855, § 1, effective January 1, 1985. **L. 2003:** (5) added, p. 1035, § 4, effective April 17.

Editor's note: This section is similar to former § 33-1-108 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2003 act enacting subsection (5), see section 1 of chapter 145, Session Laws of Colorado 2003.

33-1-105. Powers of commission. (1) The commission has power to:

(a) (I) Acquire by gift, transfer, devise, lease, purchase, or long-term operating agreement such land and water, or interest in land and water, as in the judgment of the commission may be necessary, suitable, or proper for wildlife purposes or for the preservation or conservation of wildlife. The term "interest in land and water", as used in this section, means any and all rights and interests in land, including but not limited to fee title interests, future interests, easements, covenants, and contractual rights. Every such interest in land and water held by the commission when properly recorded shall run with the land or water to which it pertains for the benefit of the citizens of this state and may be protected and enforced by the commission in the district court of the county in which the land or water, or any portion thereof, is located. Game cash funds shall not be expended for water development projects except in those projects specifically authorized by the commission.

Whenever the commission purchases any fee title interest in land or water as authorized by this section, it shall follow the procedures established in section 33-1-105.5.

(II) Repealed.

(b) Lease, exchange, or sell any property, water, land, or interest in land or water, including oil, gas, and other organic and inorganic substances which now are or may become surplus or which, in the proper management of the division, the commission desires to lease, exchange, or sell in accordance with the joint rule number 34 of the senate and house of representatives. All sales of property, water, or lands shall be at public sale, and the commission has the right to reject any or all bids. As used in this paragraph (b), "exchange" means the transferring of property, water, land, or interest in land or water to another person in consideration for the transfer to the commission of other property, water, land, or interest in land or water, or cash, or any combination thereof; except that any cash received may not exceed fifty percent of the total value of the consideration. A transaction otherwise qualifying as an exchange shall not be deemed a sale merely because dollar values have been assigned to any property, water, land, or interest in land or water, for the purpose of ensuring that the commission will receive adequate compensation.

(c) Construct or otherwise establish public facilities and conveniences at any site or on any land in which the commission holds an interest and operate and maintain all such lands, facilities, and conveniences and provide services with respect thereto, and, when appropriate, make reasonable fees or charges for their use or enter into contracts for their maintenance or operation;

(d) Capture, provide for propagation of, transport, buy, sell, or exchange any species of wildlife needed for the purpose of stocking any of the lands or waters of this state;

(e) Enter into cooperative agreements with state and other agencies, educational institutions, municipalities, political subdivisions, corporations, clubs, landowners, associations, and individuals for the development and promotion of wildlife programs;

(f) Receive and expend grants, gifts, and bequests, including federal funds, made available for the purposes for which the commission is authorized. The commission may provide matching funds when funds are available on such basis. The commission shall provide such information as may be required in order to secure such funds. The receipt and expenditure of money so received by the commission shall be reported to the executive director prior to the time of submission of the commission's annual budget requests.

(g) Enter into agreements with landowners for public hunting and fishing areas. Such agreements shall be negotiated by the commission or its authorized agent and shall provide that, if the landowner opens the land under his control to public hunting and fishing, the commission shall compensate him in an amount to be determined by the parties to the agreement. Under the agreement, the commission shall control public access to the land to prevent undue damage and to properly manage attendant wildlife populations. In no event shall the commission be liable for damages caused by the public other than those specified in the agreement.

(h) Provide for the destruction of any wildlife that poses a threat to public health, safety, or welfare.

(2) Nothing in articles 1 to 6 of this title shall be construed as authorizing the commission to change any penalty prescribed by law for the violation of the provisions of articles 1 to 6 of this title or to change the amount of any license fee established by statute.

(3) (a) In the event that the commission plans to acquire the fee title to any real property or to acquire an easement for a period to exceed twenty-five years or at a cost to exceed one hundred thousand dollars or to enter into any lease agreement for the use of real property for a period to exceed twenty-five years or at a cost to exceed one hundred thousand dollars, or to sell or otherwise dispose of the fee title to any real property that has a market value in excess of one hundred thousand dollars, after the commission has approved the transaction but before it has completed the transaction, the commission shall submit a report to the capital development committee that outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations that may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state that will result from the acquisition. The capital development committee shall review the reports submitted by the commission

and make recommendations to the commission concerning the proposed land transaction within thirty days from the day on which the report is received. The commission shall not complete the transaction without considering the recommendations of the capital development committee, if the recommendations are made in a timely manner.

(b) Repealed.

Source: **L. 84:** Entire article R&RE, p. 855, § 1, effective January 1, 1985. **L. 90:** (3) added, p. 1284, § 3, effective April 3. **L. 92:** (1)(a) amended, p. 1898, § 1, effective July 1. **L. 95:** (1)(a) and (3) amended, p. 1012, § 2, effective May 25. **L. 2000:** (1)(a)(II) and (3)(b) amended, p. 397, § 1, effective April 11. **L. 2003:** (1)(h) added, p. 1939, § 1, effective May 22. **L. 2004:** (1)(a)(II) and (3)(b) repealed, p. 417, § 3, effective April 13. **L. 2009:** (3)(a) amended, (HB 09-1168), ch. 83, p. 306, § 1, effective August 5.

Editor's note: This section is similar to former §§ 33-1-108, 33-1-112, and 33-1-113 as they existed prior to 1984.

Cross references: For the legislative declaration and acquisition authorization for the Frisco Creek wildlife hospital and rehabilitation center contained in the 2004 act repealing subsections (1)(a)(II) and (3)(b), see sections 1 and 2 of chapter 135, Session Laws of Colorado 2004.

ANNOTATION

Law reviews. For article, "Protecting Open Space and Wildlife Habitat Under Colorado Law", see 24 Colo. Law. 2729 (1995).

Landowner's right to close streams to public. Implicit in this section, especially subsection (1) (g), is the legislative recognition of the right of the landowner to close to public access the streams overlying his lands. *People v. Emmert*, 198 Colo. 137, 597 P.2d 1025 (1979).

Purchase of water right shares in a mutual ditch company not prohibited. The purchase

of water rights shares in a mutual ditch company in order to form an agreement to exchange such shares for a contract right to use another ditch company's water rights to supply a reservoir wildlife and recreation pool is not constitutionally prohibited under article XI, 2, Colo. Const., and is specifically authorized under this section. *S.E. Colo. Water Cons. v. Ft. Lyon Canal Co.* 720 P.2d. 133 (Colo. 1986).

33-1-105.5. Acquisition of property - procedure. (1) Except as provided in subsection (7) of this section, before the commission purchases any fee title interest in real property or any interest in water pursuant to section 33-1-105 (1) (a), it shall solicit bid proposals from all interested parties through the issuance of a request for proposals. Notice of such request for proposals shall be published in a newspaper of general circulation in the area where the commission plans to purchase the real property or interest in water.

(2) The notices required to be published pursuant to subsection (1) of this section shall include, but shall not be limited to, the following information:

(a) The approximate amount of money available to the commission for the type of property, interest in water, and habitat to be acquired;

(b) The nature of the wildlife habitat, other property, or interest in water desired, including the type or types of recreational opportunities, if any;

(c) The expected terms and conditions of the proposed acquisitions;

(d) The name, address, and phone number of a contact person employed by the division who shall be responsible for providing further information relating to the bid process to any interested party;

(e) The deadlines for the submission of proposals and the address where proposals are to be sent; and

(f) Any other information deemed relevant by the commission.

(3) All proposals received by the commission shall be opened in a manner which is designed to prevent the disclosure of the offering price information contained in such proposals to competing bidders. Once a successful bidder has been selected and the acquisition is completed, the acquisition price and any other information deemed relevant by the commission shall be made available to the public.

(4) The commission, or its designee, may conduct discussions with any person who submits a proposal pursuant to this section for the purpose of clarifying whether the bidder is responsive to, or has a full understanding of, the solicitation requirements. The commission, or its designee, shall, at the request of any person making a proposal, unless it deems such proposal nonresponsive to the bid solicitation, assist such person in restructuring the proposal for the purpose of making the most attractive possible proposal. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. The commission, or its designee, shall not disclose any information regarding the offering prices of other proposals during the course of such discussions. Bidders may submit revisions to proposals after the initial submission of the proposal, so long as such revisions are made prior to the date listed in the request for proposals for final submission of all proposals. The commission has the right to reject any and all bids.

(5) The commission shall evaluate the proposals based on the following criteria:

(a) Whether the ability of the commission to attain the goals established in the long-range plan of the division is enhanced by the acquisition of the property or interest in water;

(b) Whether the acquisition results in the establishment of additional wildlife habitat or in the potential for additional habitat through the use of habitat improvement methods;

(c) Whether the acquisition will improve access to other public lands;

(d) Whether additional wildlife-oriented recreational opportunities will result from the acquisition;

(e) The size and location of the property or interest in water, including the proximity of the property or interest in water to other property controlled by the division; and

(f) Such other criteria as the commission may establish.

(6) Prior to acceptance of proposals by the commission, said proposals must be reviewed by boards of commissioners of counties with lands or water included in the proposals.

(7) The commission may decide not to use the bid process established in this section when the property or interest in water being purchased is located in such proximity to other property controlled by the division that, in the judgment of the commission, the bid process would not be effective, or when the property or interest in water to be purchased is offered through foreclosure, receivership, or auction, or when the property or interest in water is to be purchased from another governmental entity. In the event that the bid process is not used, the purchase of any fee title interest in real property or any interest in water shall be approved by the general assembly acting by bill.

(8) The commission may adopt such rules as are necessary to implement the acquisition process established in this section.

(9) The commission shall include in its annual report, which report shall be submitted to the capital development committee and to the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, a listing of all acquisitions of real property or interests in water made pursuant to the provisions of this section. Such report shall describe all property and interests in water acquired since July 1, 1992, the acquisition cost of each such property or interest in water, and the appraised value of each such property or interest in water, and shall contain a description of all pending acquisitions of property and interests in water.

(10) Repealed.

Source: **L. 92:** Entire section added, p. 1898, § 2, effective July 1. **L. 93:** (1) amended, p. 1791, § 82, effective June 6. **L. 95:** Entire section RC&RE, p. 1010, § 1, effective May 25. **L. 2000:** (10) amended, p. 397, § 2, effective April 11. **L. 2004:** (10) repealed, p. 417, § 4, effective April 13.

Editor's note: Subsection (10) provided for the repeal of this section, effective March 15, 1995. (See L. 92, p. 1898.)

Cross references: For the legislative declaration and acquisition authorization for the Frisco Creek wildlife hospital and rehabilitation center contained in the 2004 act repealing subsection (10), see sections 1 and 2 of chapter 135, Session Laws of Colorado 2004.

33-1-106. Authority to regulate taking, possession, and use of wildlife - rules.

(1) In order to provide an adequate, flexible, and coordinated statewide system of wildlife management and to maintain adequate and proper populations of wildlife species, the commission shall have authority in this state, by appropriate rules and regulations, to:

(a) Determine under what circumstances, when, in which localities, by what means, what sex of, and in what amounts and numbers the wildlife of this state may be taken and, further, to shorten, extend, or close seasons on any species of wildlife in any specific locality or the entire state when it finds after investigation that such action is necessary to assure maintenance of adequate populations of wildlife or to preserve the proper ecological balance of the environment. In no event, however, shall the commission adopt any regulation concerning the taking of black bears which is in conflict with the provisions of section 33-4-101.3.

(b) Provide for the disposal of the usable portions of wildlife confiscated, abandoned, or unclaimed at meat processing and storage facilities or by taxidermists or otherwise obtained under the provisions of articles 1 to 6 of this title;

(c) Control the exportation, importation, transportation, release, possession, sale, transfer, and donation of wildlife;

(d) Establish requirements for persons who are engaged in the business of buying, selling, processing, or otherwise handling wildlife for the keeping of records of such transactions and to make such records available for inspection;

(e) Provide for the issuance of and require persons to obtain licenses for the purpose of hunting, fishing, trapping, taking, or possession of wildlife in accordance with the provisions of articles 1 to 6 of this title and the rules and regulations adopted pursuant thereto;

(f) Authorize fishing without a license on a statewide basis for up to two days during the calendar year.

(2) The commission shall adopt rules which regulate the conduct of fishing contests in public waters of the state. Such rules may prohibit the holding of such a contest on specific waters and at specific times of the year, but such rules shall not unreasonably restrict persons conducting such a contest from charging an entry fee, awarding prizes to participants, or using marked or tagged fish.

(3) (a) The state agricultural commission shall review the rules concerning captive wild ungulates submitted by the division and make recommendations to the parks and wildlife commission concerning the rules. The parks and wildlife commission shall not pass nor implement rules concerning captive wild ungulates without the approval of the state agricultural commission. If the parks and wildlife commission makes the possession of red deer unlawful in this state, the division shall compensate any person who owns or possesses any red deer on the effective date of the prohibition for the cost to replace such red deer with a legal elk of the same sex and comparable age.

(b) For purposes of this subsection (3), "captive wild ungulates" means wildlife which are ungulates lawfully acquired and held in confinement for breeding for agricultural purposes, production of meat, or other animal products; except that "captive wild ungulates" does not include wildlife held or used for the purpose of hunting or domestic elk or fallow deer held by persons licensed pursuant to section 35-41.5-104, C.R.S.

(c) Captive wild mammals and alternative livestock which have escaped from an owner's control may be removed from the wild by the division of parks and wildlife at the owner's expense, but not sooner than seventy-two hours after the division has given the owner or his designee actual notice of such escape, or the owner has notified the division of such escape. The amount the division of parks and wildlife may charge an owner shall be limited to actual costs incurred by the division to accomplish such removal, subject to further limitation by the following maximum caps:

(I) For native wildlife and for nonnative or exotic wildlife, one thousand dollars per animal not to exceed in the aggregate five thousand dollars per incident; and

(II) For prohibited species, no maximum cap per animal and no maximum cap per incident.

(4) (a) The commission may propose rules concerning:

(I) Hunting of alternative livestock as defined in section 35-41.5-102 (1), C.R.S.;

(II) Maintaining the purity of the native species of elk in the elk herds of Colorado by preventing the introduction of red deer or hybrid nonnative species, whether by the importation of untested live animals, gametes, eggs, sperm, or other genetic material, into Colorado. For purposes of this subparagraph (II), "native species of elk" includes those subspecies native to North America including *cervus elaphus roosevelti*, *cervus elaphus nannodes*, *cervus elaphus nelsoni*, *cervus elaphus manitobensis*, *cervus elaphus canadensis*, and *cervus elaphus merriami*.

(III) Requirements that owners of alternative livestock have samples taken for the purpose of identifying individual animals;

(IV) Perimeter fences for alternative livestock farms, licensed pursuant to article 41.5 of title 35, C.R.S., to prevent ingress of big game wildlife and egress of alternative livestock.

(b) The state agricultural commission shall review any rules proposed by the commission and may make recommendations to the commission concerning such rules. The state agricultural commission shall approve all rules promulgated pursuant to this section prior to adoption by the commission.

(c) For purposes of carrying out the rules promulgated pursuant to this section, at any reasonable time during regular business hours, the director or the director's designee shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant to:

(I) All buildings, yards, pens, pastures, and other areas in which any alternative livestock is kept, handled, or transported; and

(II) All records required to be kept and to make copies of such records.

(5) Nothing in this section shall be construed to preclude the commissioner of agriculture from authorizing, pursuant to section 35-40-101, C.R.S., the taking of depredating animals.

(6) The commission may adopt rules governing wildlife sanctuaries.

Source: **L. 84:** Entire article R&RE, p. 856, § 1, effective January 1, 1985. **L. 89:** (1)(f) added, p. 1342, § 1, effective July 1. **L. 90:** (3) added, p. 1528, § 2, effective July 1. **Initiated 92:** (1)(a) amended, effective January 14, 1993. **L. 94:** (3)(b) and IP(3)(c) amended and (4) added, p. 1693, § 1, effective July 1. **L. 96:** (5) added, p. 294, § 1, effective April 12. **L. 2004:** (6) added, p. 1323, § 2, effective August 4. **L. 2012:** (3)(a) amended, (HB 12-1317), ch. 248, p. 1207, § 16, effective June 4.

Editor's note: (1) This section is similar to former §§ 33-1-110 and 33-1-111 as they existed prior to 1984.

(2) Subsection (1)(a) was amended by an initiated measure, effective January 14, 1993, prohibiting the taking of black bears under certain circumstances. The vote count on the measure at the general election held November 3, 1992, was as follows:

FOR:	1,054,032
AGAINST:	458,260

ANNOTATION

Right to hunt wild game upon one's own land is not property right enforceable against state under § 15 of art. II, Colo. Const. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

There is support for dual jurisdiction of the department of natural resources and the department of agriculture over defendants' animals. In addition to the potential impact of

nonnative or exotic animals on both the agricultural industry and wildlife resources of the state, subsection (3) expressly requires that, in certain circumstances, the state agricultural commission review the division of wildlife's regulations regarding wildlife. *Colo. Div. of Wildlife v. Cox*, 843 P.2d 662 (Colo. App. 1992).

33-1-107. Regulation of areas under wildlife commission control. (1) The commission shall adopt such rules or regulations as may be reasonably necessary for the administration, protection, and maintenance of all land and water, or interests in land and water, acquired by the commission. The term "interests in land and water", as used in this

section, means any and all rights and interests in land or water less than the full fee interest. Specifically, the commission shall have power to adopt rules or regulations upon the following matters:

(a) Maintenance, enhancement, or management of property, vegetation, wildlife, signs, markers, buildings or other structures, and any object of scientific value or interest in any such area;

(b) Restriction, limitation, or prohibition concerning the use of any such area either as to time, manner, permitted activities, or numbers of people;

(c) Necessary sanitation, health, and safety measures. ~

(2) Rules or regulations that apply to any particular area shall be published as provided in section 33-1-108 and shall be prominently posted at any such area. Absence of posting shall not, however, relieve any person from the responsibility to comply with applicable rules or regulations if such rules or regulations have been published as provided in section 33-1-108.

Source: L. 84: Entire article R&RE, p. 857, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-1-111 as it existed prior to 1984.

33-1-108. Rule-making procedure - judicial notice of rules. (1) Rule-making procedures shall be as prescribed in article 4 of title 24, C.R.S., except as otherwise provided in articles 1 to 6 of this title. Notice of rules and regulations may also be given such other publicity as the commission may deem desirable.

(2) A certified copy, which may be certified by the director or his designee, of any rule, regulation, or order of the commission shall be prima facie evidence in any court of this state. A printed copy of any rule or regulation purporting or proved to have been adopted and published by the authority of the commission or as published in the code of Colorado regulations in accordance with the provisions of section 24-4-103, C.R.S., is presumptive evidence of such rule or regulation and of its adoption.

(3) All rules, regulations, and orders of the commission, lawfully adopted and in force on December 31, 1984, shall continue to be effective until revised, amended, repealed, or nullified, or until they have expired, pursuant to law.

Source: L. 84: Entire article R&RE, p. 858, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-1-109 as it existed prior to 1984.

33-1-109. Office of director of division created. (Repealed)

Source: L. 84: Entire article R&RE, p. 858, § 1, effective January 1, 1985. L. 2011: Entire section repealed, (SB 11-208), ch. 293, p. 1387, § 8, effective July 1.

Editor's note: This section was similar to former § 33-1-114 as it existed prior to 1984.

33-1-110. Duties of the director of the division. (1) The director is the head of the division under the direction and supervision of the commission and the executive director and has general supervisory control of and authority over all activities, functions, and employees of the division.

(2) Repealed.

(3) The director shall prepare such reports as the executive director shall require the commission or director to submit.

(4) With the approval of the commission, the director shall authorize such scientific and other studies as are necessary and shall collect, classify, and disseminate statistics, data, and other information which in his discretion will tend to accomplish the objectives of articles 1 to 6 of this title and the state policy set forth in section 33-1-101.

(5) The director shall appoint Colorado wildlife officers and may appoint special wildlife officers to serve without pay, who shall have the powers and authority designated by the director. A special wildlife officer commission shall not be issued until the applicant has submitted to the division an application setting forth his or her qualifications to act as such an officer. Such qualifications shall include a minimum of forty hours of continuing law enforcement education per calendar year. The director may revoke the special wildlife officer commission of any such person at his or her pleasure.

(6) The director and the executive director shall consult with the commission in the establishment of the division's budget and the expenditures of all moneys appropriated to the division by the general assembly.

(6.5) The director, following notification of the commission, shall authorize an expenditure necessary to pay a local governing body for expenses incurred pursuant to section 35-5.5-110 (3), C.R.S.

(6.7) The director shall certify to the state controller that commitment or payment vouchers submitted by local habitat partnership committees are consistent with distribution management plans and guidelines approved by the commission. Such certification is the only requirement necessary to authorize the state controller to disburse funds from the habitat partnership cash fund.

(7) (a) The director, with approval of the commission, shall appoint a committee of nine persons to act as the "habitat partnership council", referred to in this section as the "council". The council shall have statewide responsibility and authority.

(b) (I) The council shall consist of the following members: Two sports persons who purchase big game licenses on a regular basis in Colorado; two persons representing livestock growers in Colorado; one person from the United States department of agriculture forest service; one person from the United States department of the interior bureau of land management; one person from the Colorado state university range extension program; one person representing agricultural crop producers; and one person from the Colorado division of parks and wildlife. All persons on the council shall be residents of the state of Colorado.

(II) Members of the council who will represent livestock growers and agricultural crop producers shall be chosen by the director from persons nominated by the local habitat partnership committees, pursuant to subparagraph (VI) of paragraph (d) of subsection (8) of this section.

(III) For the initial appointments to the council, the terms of the four members representing sports persons and livestock growers shall be two years for one member of each group and four years for the other member of each group, after which all appointments shall be for four years. The term lengths for the members representing the various agencies shall be at the discretion of the respective agencies. There shall be no limit on the number of terms a member may serve.

(c) The duties of the council are:

(I) To advise local habitat partnership committees;

(II) To assist in the dissemination of information concerning the habitat partnership program;

(III) To review draft plans for compliance with program guidelines established by the commission and to recommend appropriate action by the commission;

(IV) To monitor program effectiveness and to propose to the commission changes in guidelines and land acquisition planning and review as appropriate;

(V) To advise the director whether or not payment vouchers submitted by local habitat partnership committees are consistent with distribution management plans approved by the commission;

(VI) To report to the commission and to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee pursuant to section 33-1-112 (8).

(d) (Deleted by amendment, L. 96, p. 1727, § 1, effective June 3, 1996.)

(8) (a) The habitat partnership program is hereby created to assist the division of parks and wildlife by working with private land managers, public land management agencies, sports persons, and other interested parties to reduce wildlife conflicts, particularly those

associated with forage and fence issues, and to assist the division of parks and wildlife in meeting game management objectives through duties as deemed appropriate by the director.

(b) The director, with the approval of the commission, shall have the authority to appoint a “habitat partnership committee”, referred to in this section as a “committee”, in any area of the state where conflicts between wildlife and private land owners and managers engaged in the management of public and private land exist.

(c) A committee shall consist of the following members: One sports person who purchases big game licenses on a regular basis in Colorado; three persons representing livestock growers in the area of the state in which the committee is being established; one person from each of the federal agencies that has land management responsibilities in such area of the state; and one person from the Colorado division of parks and wildlife. All persons on any such committee shall be residents of the state of Colorado.

(d) The duties of a committee are the following:

(I) To develop big game distribution management plans to resolve rangeland forage, growing hay crop, harvested crop aftermath grazing, and fence conflicts subject to commission approval;

(II) To monitor program effectiveness and to propose to the council changes in guidelines and land acquisition planning and review as appropriate;

(III) To request for the committee, on an annual basis, funds from the council consistent with the distribution management plan developed by any such committee;

(IV) To expend funds allocated by the council or acquired from other sources as necessary to implement distribution management plans;

(V) To make an annual report of expenditures and accomplishments of the committee to the council by August 15 of each year;

(VI) To nominate a person to act as a representative of agricultural livestock growers or crop producers to the habitat partnership council for the area of the state where such committee is organized;

(VII) To reduce wildlife and land management conflicts as the conflicts relate to big game forage and fence issues and other management objectives.

(e) The committee shall be authorized to procure from land owners, land managers, or other providers, materials or services necessary for carrying out activities identified in the distribution management plans pursuant to subparagraph (IV) of paragraph (d) of this subsection (8); except that all such procurements shall be certified as within the scope of the activities and funding levels authorized in such distribution management plans before any such procurement may be authorized.

Source: **L. 84:** Entire article R&RE, p. 858, § 1, effective January 1, 1985. **L. 92:** (7) and (8) added, p. 1889, § 1, effective June 2. **L. 96:** (6.5) added, p. 763, § 1, effective May 23; (7) and (8) amended, p. 1727, § 1, effective June 3. **L. 2001:** (6.7) added and (7)(b)(II), (7)(c)(V), and (8) amended, p. 697, § 1, effective July 1, 2002. **L. 2002:** (7)(c)(VI) amended, p. 876, § 1, effective August 7. **L. 2003:** (7)(c)(VI) amended, p. 2013, § 108, effective May 22; (5) amended, p. 1629, § 66, effective August 6; (5) amended, p. 1953, § 47, effective August 6. **L. 2012:** (2) repealed and (6.7), IP(7)(c), and (7)(c)(V) amended, (HB 12-1317), ch. 248, p. 1207, § 17, effective June 4.

Editor’s note: This section is similar to former § 33-1-115 as it existed prior to 1984.

33-1-111. Hearings - administrative law judges. Every hearing provided for in articles 1 to 6 of this title to be conducted by the commission or the division shall, except as provided in sections 33-4-101 and 33-6-106, be conducted by such agency or an administrative law judge designated by such agency pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations for such administrative law judges made to the department of personnel, and every hearing shall comply with the provisions of articles 1 to 6 of this title and the provisions of article 4 of title 24, C.R.S.

Source: **L. 84:** Entire article R&RE, p. 859, § 1, effective January 1, 1985. **L. 87:** Entire section amended, p. 974, § 94, effective March 13. **L. 95:** Entire section amended, p. 666, § 103, effective July 1.

33-1-112. Funds and cost accounting - repeal. (1) (a) Except as provided in subsections (7) and (8) of this section, sections 33-1-112.5 and 33-6-105, and in part 7 of article 22 of title 39, C.R.S., all moneys received from wildlife license fees, and all moneys from all other wildlife sources, and all interest earned on such moneys shall be deposited in the state treasury and credited to the wildlife cash fund, which fund is hereby created, and such moneys shall be utilized for expenditures authorized or contemplated by and not inconsistent with the provisions of articles 1 to 6 of this title for wildlife activities and functions and for the financing of impact assistance grants pursuant to part 3 of article 25 of title 30, C.R.S. All moneys so deposited in the wildlife cash fund shall remain in such fund to be used for the purposes set forth in the provisions of articles 1 to 6 of this title and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(b) For the fiscal year commencing July 1, 2008, there shall be transferred one million two hundred fifty thousand dollars from the wildlife cash fund to the division of wildlife aquatic nuisance species fund, created in section 33-10.5-108.

(2) There is hereby created a stores revolving fund in the amount of eight hundred thousand dollars, which amount shall be maintained to acquire stock for warehousing and distributing supplies to operating units of the division. The moneys in such fund shall under no circumstances be used for the payment of operating expenses but shall be maintained intact as a revolving fund of eight hundred thousand dollars, composed of the following assets: Cash, accounts receivable, and inventory supplies. The purpose of the fund is to provide better budgetary control, and nothing contained in this subsection (2) shall authorize the division to make any purchases or acquisitions in any manner except as provided by law.

(3) There is hereby created the vanpool program revolving account. Receipts from participants in vanpools operated by the division shall be deposited to said account and shall be used only to pay the monthly operating and maintenance costs of such vans which are attributable to the use of such motor vehicles in carrying persons to and from work and to pay that portion of the purchase cost of replacement motor vehicles which is attributable to the use of the motor vehicles in carrying persons to and from work.

(3.5) (a) There is hereby created the wildlife management public education fund. Moneys in such fund shall consist of the surcharge authorized by section 33-4-102 (8.5), such moneys as the general assembly allocates to the fund, and moneys collected from gifts, donations, contributions, bequests, grants, and funds or reimbursements made from other sources to the wildlife management public education advisory council created in section 33-4-120.

(b) Moneys in the wildlife management public education fund shall be subject to annual appropriation and shall be used by the wildlife management public education advisory council for carrying out its duties as set forth in section 33-4-120, including, but not limited to, the reasonable and necessary expenses incurred by council members in fulfilling their duties, as approved by the director.

(c) All receipts and interest derived from the investment of moneys in the wildlife management public education fund shall be credited to such fund.

(4) The director of the division, with the consent and approval of the executive director, is authorized and directed to establish an adequate system of accounting which shall provide accurate and timely records of:

- (a) All moneys received and from what sources;
- (b) All moneys expended and for what purposes;
- (c) All licenses that are issued, numbering each type separately.

(5) In his annual budget request to the governor, the executive director shall clearly show the allocations of funds used for wildlife purposes among operations, land acquisition, and capital construction and for any other purposes.

(6) The cost of nongame programs established under articles 1 to 6 of this title shall be borne by the general fund, the nongame and endangered wildlife cash fund, the wildlife cash fund, and any other sources deemed appropriate by the general assembly.

(7) (a) There is hereby created in the state treasury the wildlife for future generations trust fund. In addition to moneys appropriated to such fund by the general assembly, the

commission is authorized to accept grants and donations for deposit in said fund. Moneys in the fund shall be accrued and maintained intact; only the interest earned on moneys in the fund shall be continuously appropriated and may be expended on such property operation and maintenance and other wildlife projects and programs as may from time to time be deemed appropriate by the commission. The fund is to be under the control of and to be administered by the commission. The controller shall authorize disbursements of interest earned on said fund as directed by the commission on receipt of a voucher from said commission stating that the disbursement is in accordance with this subsection (7). The commission shall submit an annual report of the moneys expended from the trust fund and matters accomplished by such expenditures from the preceding fiscal year to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee by the convening date of each regular session of the general assembly in accordance with section 24-1-136 (9), C.R.S. The commission shall also submit to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee a report on moneys proposed to be expended from the trust fund and the matters to be accomplished by such expenditures in the upcoming fiscal year. Interest earned on such fund that is not expended as provided shall remain in the wildlife for future generations trust fund for future expenditure as provided in this subsection (7). All moneys and interest in such fund shall remain in such fund to be used for the purposes set forth in this subsection (7) and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(b) There is hereby created a wildlife habitat account in the wildlife for future generations trust fund, created in paragraph (a) of this subsection (7). The state treasurer shall deduct five million dollars from the wildlife cash fund, created in subsection (1) of this section, and transfer such sum to the wildlife habitat account. The interest earned on such five million dollars shall be continuously appropriated and shall be used solely for operation and maintenance of properties, leases, and easements owned by the division.

(8) (a) There is hereby created in the state treasury the habitat partnership cash fund. The moneys in the habitat partnership cash fund shall consist of those moneys annually transferred from the wildlife cash fund in accordance with paragraph (e) of this subsection (8) for the partnership program and any gifts, grants, donations, and reimbursements made to the program from other sources. The moneys in the fund shall be used in accordance with the duties of the habitat partnership council as specified in section 33-1-110 (7) and (8), including, but not limited to, reasonable and necessary expenses incurred by council members in the fulfillment of their duties, as approved by the director. All interest derived from the investment of moneys in the habitat partnership cash fund shall be credited to the fund. Any balance remaining in the fund at the end of any fiscal year shall remain in the fund subject to the limitations provided in paragraph (e) of this subsection (8).

(b) The council shall submit an annual report to the commission, the senate and house agriculture committees, and the executive director of the department of natural resources specifically stating the items for which it has expended moneys from the fund and the purpose of such items.

(c) If the council ceases to exist, all moneys in the habitat partnership cash fund shall revert to the wildlife cash fund.

(d) (Deleted by amendment, L. 96, p. 1729, § 2, effective June 3, 1996.)

(e) (I) On July 1, 2002, and each year thereafter, there shall be transferred from the wildlife cash fund to the habitat partnership cash fund an amount equal to five percent of the net sales of big game licenses used in the geographic areas represented by local habitat partnership committees from the previous calendar year.

(II) All moneys in the habitat partnership cash fund shall be continuously appropriated to the division of parks and wildlife for the purpose of funding the habitat partnership program.

(III) Any balance in the habitat partnership cash fund at the end of the fiscal year shall not exceed the total amount of the wildlife cash fund transfer from the beginning of that fiscal year. Any excess moneys shall revert to the wildlife cash fund.

(IV) This paragraph (e) is repealed, effective July 1, 2015.

Source: **L. 84:** Entire article R&RE, p. 859, § 1, effective January 1, 1985. **L. 87:** (1) amended, p. 1266, § 1, effective January 1, 1988. **L. 89:** (1) and (6) amended and (7) added, p. 1342, § 2, effective July 1. **L. 90:** (6) amended, p. 1739, § 4, effective April 3. **L. 92:** (1) amended and (8) added, p. 1891, § 2, effective June 2. **L. 96:** (8) amended, p. 1729, § 2, effective June 3. **L. 98:** (3.5) added, p. 855, § 1, effective July 1. **L. 99:** (3.5) amended, p. 1395, § 1, effective June 4. **L. 2000:** (7) amended, p. 1365, § 1, effective May 30. **L. 2001:** (8)(a) amended and (8)(e) added, p. 699, § 2, effective July 1, 2002. **L. 2002:** (7)(a) and (8)(b) amended, p. 876, § 2, effective August 7. **L. 2003:** (7)(a) amended, p. 2013, § 109, effective May 22. **L. 2005:** (3.5)(a) amended, p. 474, § 4, effective January 1, 2006. **L. 2007:** (8)(e)(IV) amended, p. 166, § 1, effective March 22. **L. 2008:** (1) amended, p. 1588, § 2, effective May 29.

Editor's note: This section is similar to former § 33-1-116 as it existed prior to 1984.

ANNOTATION

Purchasers of wildlife licenses are not granted any vested interest, or any interest, in wildlife cash fund by a statute or constitution.

Game & Fish Comm'n v. Feast, 157 Colo. 303, 402 P.2d 169 (1965).

33-1-112.5. Search and rescue fund. (1) There is hereby created in the state treasury a search and rescue fund. Such fund is established to assist any agency or political subdivision of the state of Colorado for costs incurred in search and rescue activities involving persons holding hunting or fishing licenses, vessel, snowmobile, or off-highway vehicle registrations, or a Colorado outdoor recreation search and rescue card. Reimbursable costs are limited to actual operational expenses. Reimbursable costs shall not include salaries paid to persons permanently employed by the agency or political subdivision.

(2) (a) A surcharge of twenty-five cents shall be assessed on each license listed in section 33-4-102 (1) and (1.4) that is sold by the division or one of its license agents pursuant to section 33-4-101. Receipts and interest from the surcharge shall be deposited in the search and rescue fund created in subsection (1) of this section.

(b) A surcharge of twenty-five cents shall be assessed on each vessel, each snowmobile, and each off-highway vehicle registration that is sold by the division or one of its agents pursuant to section 33-13-103, 33-14-102, or 33-14.5-102. Receipts and interest from the surcharge shall be deposited in the search and rescue fund created in subsection (1) of this section. To coincide with annual registration renewal schedules, the surcharge shall be assessed on an annual basis beginning on October 1, 1992, for snowmobile registrations, January 1, 1993, for vessel registrations, and April 1, 1993, for off-highway vehicle registrations.

(c) (I) The general assembly hereby creates the Colorado outdoor recreation search and rescue card program. The department of local affairs shall make a Colorado outdoor recreation search and rescue card available to the public in accordance with this paragraph (c) to backpackers, hikers, mountain and trail bikers, cross country skiers, and other persons who use the Colorado back country for recreation. The department of local affairs shall establish procedures for the licensing of vendors who sell the outdoor recreation search and rescue card, the printing of such cards, and the distribution of such cards to vendors for sale to the public.

(II) The Colorado outdoor recreation search and rescue card shall cost three dollars and shall be valid for one year from the date of purchase. The department shall charge vendors two dollars for each Colorado outdoor recreation search and rescue card, which shall be transmitted to the state treasurer, who shall credit the amount to the search and rescue fund created in subsection (1) of this section. The remaining one dollar shall be retained by the vendor as the vendor's fee.

(III) The department may issue a multi-year Colorado outdoor recreation search and rescue card that shall be valid for a period not to exceed five years. Such multi-year card may be offered at a reduced rate to vendors with a reduced vendor fee to reflect administrative cost savings and other considerations.

(IV) The general assembly finds and declares that the Colorado outdoor recreation search and rescue card program is a new program. The department of local affairs is therefore authorized to contract, pursuant to section 24-50-504 (2) (b), C.R.S., with a person, corporation, or entity for any elements of the administration of the program created by this paragraph (c).

(3) All agencies and political subdivisions of the state shall have the right to make a claim on the search and rescue fund for reimbursement of costs incurred in the performance of search and rescue activities involving those persons specified in subsection (1) of this section. Such claims shall be submitted to the department of local affairs for immediate consideration. Any reimbursement claims which have been certified by the sheriff of the county in which the search and rescue activity occurred shall be eligible for payment by the department of local affairs. The department of local affairs shall establish rules for the procedure through which claims shall be submitted and for payment of such claims.

(4) The search and rescue fund created in subsection (1) of this section shall be the sole source of funds for the reimbursement of costs incurred under this section in search and rescue activities involving those persons specified in subsection (1) of this section. The wildlife cash fund established in section 33-1-112 and the parks and outdoor recreation cash fund established in section 33-10-111 shall not be used for reimbursement of costs as provided in this section.

(5) The moneys in the search and rescue fund created in subsection (1) of this section shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this section.

(6) At the close of any fiscal year, all of the moneys remaining in the search and rescue fund and appropriated for search and rescue expenses, after all approved claims and administrative costs have been paid, shall be divided among those counties that have applied to the department of local affairs for year-end grants or reimbursements from the search and rescue fund. The department of local affairs shall divide such moneys among the counties, first making payment for uncompensated searches and rescues of parents, siblings, spouses, children, or grandchildren of persons holding hunting or fishing licenses, vessel, snowmobile, or off-highway vehicle registrations, or the owner of a Colorado outdoor recreation search and rescue card and second making payment for search and rescue-related training and equipment, and for any other uncompensated searches. The department of local affairs shall establish operating procedures for applying for year-end grants or reimbursements from the moneys remaining in the search and rescue fund.

(7) and (8) (Deleted by amendment, L. 2001, p. 599, § 1, effective July 1, 2001.)

Source: L. 87: Entire section added, p. 1266, § 2, effective January 1, 1988. L. 89: (2) amended, p. 1343, § 3, effective July 1. L. 91: (2) amended, p. 1920, § 46, effective June 1. L. 92: (1), (2), (3), and (4) amended and (6) added, p. 1906, § 1, effective June 1. L. 94: (1), (2)(a), (5) and (6) amended, p. 1733, § 1, effective January 1, 1995. L. 95: (3) and (6) amended and (7) and (8) added, p. 475, § 1, effective July 1. L. 96: (2)(b) amended, p. 779, § 2, effective May 23. L. 2001: (1), (2)(a), (6), (7), and (8) amended and (2)(c) added, p. 599, § 1, effective July 1. L. 2005: (2)(a) amended, p. 474, § 5, effective January 1, 2006.

33-1-113. Expenses of employees. (1) In addition to their salaries, all employees of the division shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties.

(2) In addition to the compensation paid employees of the division and in addition to reimbursement for expenses as provided in subsection (1) of this section, each employee of the division who is vested with the rights and powers of a Colorado wildlife officer, including and limited to area wildlife managers and district wildlife managers, shall, because of the number of hours and the extraordinary service performed by such employees and the requirement of purchasing necessary uniform items, be further reimbursed for maintenance and ordinary expenses incurred in the performance of their duties in such amount as shall be determined by the commission, but the amount authorized under this subsection (2) for any such employee of the division shall not exceed the sum of fifty dollars per month.

Source: L. 84: Entire article R&RE, p. 860, § 1, effective January 1, 1985. L. 2003: (2) amended, p. 1630, § 67, effective August 6; (2) amended, p. 1954, § 48, effective August 6.

Editor's note: This section is similar to former § 33-1-117 as it existed prior to 1984.

33-1-114. Conservation magazine - revenue - Colorado outdoors magazine revolving fund. (1) The division is authorized to distribute a conservation magazine and associated informational products. The revenue derived therefrom shall be deposited in the state treasury and credited to the Colorado outdoors magazine revolving fund, which fund is hereby created. The magazine, subject to the approval of the executive director, shall be issued in accordance with the provisions of section 24-1-136, C.R.S. Funds necessary for the publication and distribution of such magazine and associated products shall be expended from the revolving fund, and additional funds, if necessary, will be included in the division's annual budget of wildlife cash funds. Such conservation magazine and associated informational products may be sold by the division or by any person designated by such division pursuant to contract. Any surplus in the revolving fund in excess of one hundred thousand dollars shall revert to the wildlife cash fund at the close of each fiscal year.

(2) If a private business manufactures and produces for sale a product that is available on the commercial market and the division is not currently producing such product, such product, or one substantially similar, shall not be produced or offered for sale by the division for so long as such product remains available from a private business.

Source: L. 84: Entire article R&RE, p. 860, § 1, effective January 1, 1985. L. 94: Entire section amended, p. 1214, § 1, effective May 22.

Editor's note: This section is similar to former § 33-1-118 as it existed prior to 1984.

33-1-115. Migratory birds - possession of raptors - reciprocal agreements. (1) The open season for all migratory game birds in the state of Colorado shall be the same as that fixed, or as may be fixed, under the administrative provisions of the federal "Migratory Bird Treaty Act", secs. 703 to 711 of title 16, U.S.C., as amended. Any change made by the United States department of the interior, fish and wildlife service, or any new ruling made by the secretary of the interior under said act which is applicable to the state of Colorado shall be in effect in the state of Colorado and shall be enforced by the division. The term "migratory birds" includes birds defined as such under the administrative provisions of said "Migratory Bird Treaty Act" and regulations adopted pursuant to the provisions of said act.

(2) (a) The commission shall issue licenses in accordance with its regulations to permit the possession of raptors for falconry and captive breeding purposes and to encourage individual efforts to propagate the species. The commission shall actively pursue the establishment of reciprocal agreements with other states and Canada as a signatory to the "Migratory Bird Treaty Act", which agreements shall allow for the taking, use, and transportation of raptors from each respective area by qualified and licensed applicants.

(b) Applicants from other states or Canadian provinces or territories which are signatories to the "Migratory Bird Treaty Act" and have reciprocal raptor agreements with Colorado may obtain nonthreatened raptors in reasonable numbers commensurate with raptor populations within this state. The commission may issue nonresident take licenses to such applicants, and the fees for such licenses shall be equivalent to the fees for comparable licenses in the states, provinces, or territories with which Colorado holds such agreements.

(c) It is the intent of the general assembly for the commission to make the rules of this state conform to or be more stringent than the provisions of the "Migratory Bird Treaty Act", as amended, and the "Endangered Species Act of 1973", as amended. These rules may include, but not be limited to, captive breeding and the use of domestic captive bred raptors and the purchase, sale, transportation, importation, exportation, or exchange of raptors with persons having like licenses.

(3) Repealed.

Source: **L. 84:** Entire article R&RE, p. 860, § 1, effective January 1, 1985. **L. 94:** (2) amended and (3) added, p. 1577, § 2, effective May 31. **L. 2002:** (3) repealed, p. 877, § 3, effective August 7. **L. 2007:** (2)(c) amended, p. 2046, § 87, effective June 1.

Editor's note: This section is similar to former § 33-20-102 as it existed prior to 1984.

Cross references: For the "Endangered Species Act of 1973", see Pub.L. 93-205, codified at 16 U.S.C. sec. 1531 et seq.

33-1-116. Powers of director of United States fish and wildlife service. The director of the United States fish and wildlife service and his duly authorized agents have the right within this state to conduct fish hatching and fish culture activities and all other operations connected therewith that the said director may consider necessary and proper. Nothing in sections 33-1-116 to 33-1-119 shall be construed as permitting or granting to the said director or his duly authorized agents any jurisdiction over or the right to interfere with the activities or facilities of the division, nor shall anything in said sections be construed as contravening any of the laws of this state relating to public health, pollution, or water rights.

Source: **L. 84:** Entire article R&RE, p. 861, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-2-102 as it existed prior to 1984.

33-1-117. Assent of state to Pittman-Robertson act. The state of Colorado through the division assents to the provisions of the act of congress entitled "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes.", approved September 2, 1937, and as amended. The division is authorized to perform such acts as may be necessary to conduct and establish cooperative wildlife restoration projects, as defined in such act, in compliance with such act and the rules and regulations promulgated by the secretary of the interior thereunder. No moneys or funds accruing to the division pursuant to such act shall be used for any purpose other than for such projects and the administration of the division, but the division may pay into the general fund as a part of its administrative costs a reasonable rental or service charge, as it may determine, for office quarters and auditing, bookkeeping, and like services furnished to the division by the state. All moneys now in the wildlife cash fund, or accrued or accruing to or received or receivable by the division, pursuant to such act shall be appropriated to pay for the administrative expense of such division for the protection, preservation, restoration, and control of wildlife of the state and to cover expenses in enforcing the wildlife laws of the state. Such moneys are to be expended upon a voucher approved by the director or an employee of the department authorized by the executive director and a warrant drawn by the controller.

Source: **L. 84:** Entire article R&RE, p. 861, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-2-104 as it existed prior to 1984.

Cross references: For the "Pittman-Robertson Wildlife Restoration Act", see Pub.L. 75-415, codified at 16 U.S.C. sec. 669 et seq.

ANNOTATION

This section complies with the requirements of the federal Pittman-Robertson act. The plain language of the statute requires the department of wildlife to act in compliance with the Pittman-Robertson act and the rules and regulations promulgated by the secretary of interior under the act. Therefore, this section in-

corporates by reference all statutory and regulatory requirements of the Pittman-Robertson act. To require Colorado to include all possible violations of the act and its supporting rules and regulations would encourage "legislative loopholes". *Sportsmen's Wildlife Def. Fund v. Romer*, 29 F. Supp.2d 1199 (D. Colo. 1998).

33-1-118. Assent to Dingell-Johnson act. The state of Colorado through the division assents to the provisions of the act of congress entitled "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes.", approved August 9, 1950, and as amended. The division is authorized and directed to perform such acts as may be necessary to conduct and establish cooperative fish restoration and management projects as defined in and in compliance with such act of congress and the rules and regulations promulgated by the secretary of the interior thereunder. No moneys or funds accruing to the division as a result of compliance with such act shall be used for any purpose other than for such projects and the administration of such division.

Source: L. 84: Entire article R&RE, p. 861, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-2-105 as it existed prior to 1984.

Cross references: For the "Dingell-Johnson Sport Fish Restoration Act", see Pub.L. 81-681, codified at 16 U.S.C. sec. 777 et seq.

33-1-119. Federal aid projects income fund. There is hereby created a fund designated as the federal aid projects income fund to which shall be deposited certain revenues and earnings derived from properties purchased and operated jointly by the United States government and the state of Colorado under the provisions of sections 33-1-116 to 33-1-119, and the provisions of the acts of congress referred to in this article, and the rules and regulations of the United States department of the interior. Such revenues and earnings so deposited shall be limited to those specific revenues and earnings to which each has a right under the provisions of cooperative agreements establishing such rights. All moneys deposited under the provisions of this section are specifically appropriated for the purposes for which such moneys may accrue.

Source: L. 84: Entire article R&RE, p. 862, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-2-106 as it existed prior to 1984.

33-1-120. Limitation on division and commission authority. (1) Neither the commission nor the division shall enter into any mitigation agreements with any agency of the federal government relating to the transfer or exchange of land or water condemned by the federal government without the express consent of the general assembly.

(2) The provisions of subsection (1) of this section shall not be construed to prevent the commission or the division from entering into common agreements with a federal agency pertaining to the stocking of fish or management of other wildlife on federally owned lands.

(3) The programs of the commission and division, including the listing of threatened and endangered species, shall not be utilized by the commission or division to supersede, abrogate, or impair any water right. For the purposes of this subsection (3), "impair" means requiring water users to forego water to which they are entitled under a water right.

Source: L. 84: Entire article R&RE, p. 862, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-1-113 as it existed prior to 1984.

33-1-120.5. Oversight of the division - target dates for implementation of management review recommendations. (1) As used in this section, unless the context otherwise requires, "management review recommendations" means the recommendations made by Deloitte Touche LLP in the management review final report dated June 5, 1995.

(2) There is hereby established a deadline of no later than January 1, 1998, for the division to implement the management review recommendations.

(3) The director shall:

(a) Establish a schedule for the implementation of the management review recommendations;

(b) Repealed.

(c) Make decisions concerning the implementation of or departure from review recommendations in conjunction with the executive director of the department of natural resources and the commission.

(4) The director shall have the authority to reimburse or compensate employees relocated due to the implementation of the management review in the following manner:

(a) (I) The cost of all reasonable and necessary moving expenses incurred by an employee for the packing and unpacking, insurance, transportation, storage in transit, and installation of household effects shall be reimbursed.

(II) Notwithstanding subparagraph (I) of this paragraph (a), no reimbursement shall be paid for expenses incurred for insurance, transportation, or storage in transit to the extent such expenses cover a period longer than sixty days, nor shall reimbursement be paid for expenses incurred for household effects exceeding eighteen thousand pounds weight.

(b) Reimbursement is authorized for expenses charged by commercial business establishments for renting trailers or trucks for the purpose of moving household effects and for towing house trailers containing the household effects of employees. If such expenses exceed one thousand dollars, the claim therefor shall be accompanied by two competitive bids. Reimbursement shall be made at the rate proposed in the lowest bid. Any employee who performs his or her own packing and moving shall be reimbursed at the rate of fifty percent of the lowest commercial moving bid, not to exceed two thousand five hundred dollars.

(c) When the director requires an employee to relocate due to the implementation of the management review, such employee shall receive a per diem allowance for not more than sixty days for the necessary and reasonable expenses incurred in locating a primary residence at the new location. Such sixty-day period shall be tolled during any interruption caused by sick leave, vacation, or other authorized leave of absence or ordered travel.

(d) No reimbursement rate under this subsection (4) shall exceed a rate established by executive order. The per diem rate for dependent children between the ages of twelve and eighteen years and the spouse or partner of an employee shall not exceed seventy-five percent of the rate established by executive order for employees. The per diem rate for dependent children of an employee who are less than twelve years of age shall not exceed fifty percent of the rate established by executive order for employees.

Source: **L. 96:** Entire section added, p. 1350, § 3, effective June 1. **L. 2002:** (3)(b) repealed, p. 877, § 4, effective August 7. **L. 2012:** (3)(c) amended, (HB 12-1317), ch. 248, p. 1208, § 18, effective June 4.

33-1-121. Captive wildlife and alternative livestock board - created - duties - repeal. (Repealed)

Source: **L. 94:** Entire section added, p. 1694, § 2, effective July 1. **L. 99:** (6) amended, p. 533, § 1, effective May 3. **L. 2004:** (3)(a) amended, p. 1324, § 3, effective August 4.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2009. (See L. 99, p. 533.)

33-1-122. Wildlife legislative interim committee. (Repealed)

Source: **L. 95:** Entire section added, p. 1013, § 3, effective May 25.

Editor's note: Subsection (7) provided for the repeal of this section, effective January 1, 1996. (See L. 95, p. 1013.)

33-1-123. Division - predator management plan - predator management advisory committee - creation - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 1380, § 1, effective July 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2001. (See L. 2000, p. 1380.)

33-1-124. Revenue bonds - authority - issuance - requirements - covenants.

(1) (a) The commission may, by resolution that meets the requirements of subsection (2) of this section, authorize and issue revenue bonds in an amount not to exceed ten million dollars in the aggregate for expenses of the division. Such bonds may be issued only after approval by both houses of the general assembly acting either by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution. Such bonds shall be payable only from moneys allocated to the division for expenses of the division pursuant to section 33-1-112.

(b) All bonds issued by the commission shall provide that:

(I) No holder of any such bond may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bond does not constitute a debt of the state and is payable only from the net revenues allocated to the division for expenses as designated in such bond.

(2) (a) Any resolution authorizing the issuance of bonds under the terms of this section shall state:

(I) The date of issuance of the bonds;

(II) A maturity date or dates during a period not to exceed thirty years from the date of issuance of the bonds;

(III) The interest rate or rates on, and the denomination or denominations of, the bonds; and

(IV) The medium of payment of the bonds and the place where the bonds will be paid.

(b) Any resolution authorizing the issuance of bonds under the terms of this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds; and

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(3) Any bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the commission shall advertise the sale in such manner as the commission deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest to the date of delivery.

(4) Notwithstanding any provisions of law to the contrary, all bonds issued pursuant to this section are negotiable.

(5) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) Any resolution made pursuant to the terms of this section shall be deemed a contract with the holders of the bonds, and the duties of the commission under such resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

(6) Bonds issued under this section and bearing the signatures of the commission in office on the date of the signing shall be deemed valid and binding obligations regardless of whether, prior to delivery and payment, any or all of the persons whose signatures appear thereon have ceased to be members of the commission.

(7) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net

revenues pledged therefor. The commission may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by such commission over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

Source: L. 2001: Entire section added, p. 202, § 2, effective July 1.

ARTICLE 2

Nongame and Endangered Species Conservation

Editor's note: (1) Prior to 1984, the substantive provisions of this article were contained in article 8 of this title.

(2) This article was numbered as article 2 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1984 with an effective date of January 1, 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

33-2-101.	Short title.	33-2-105.6.	Reintroduction of the bonytail fish and the black-footed ferret.
33-2-102.	Legislative declaration.		
33-2-103.	Definitions.	33-2-105.7.	Reintroduction of species - legislative declaration - report.
33-2-104.	Nongame species - regulations.	33-2-106.	Management programs.
33-2-105.	Endangered or threatened species.	33-2-107.	Regulations.
33-2-105.5.	Reintroduction of endangered species - legislative declaration.	33-2-108.	Funding. (Repealed)

33-2-101. Short title. This article shall be known and may be cited as the "Nongame, Endangered, or Threatened Species Conservation Act".

Source: L. 84: Entire article R&RE, p. 862, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-101 as it existed prior to 1984.

33-2-102. Legislative declaration. The general assembly finds and declares that it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual property owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere; and that adequate funding be made available to the division annually by appropriations from the general fund.

Source: L. 84: Entire article R&RE, p. 862, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-102 as it existed prior to 1984.

33-2-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern, scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations. "Management" may include artificial propagation to maintain threatened or endangered species populations, in concert with the exercise of water rights, and may also include restriction of stocking of species which are in competition with threatened or endangered species for the available habitat.

Source: L. 84: Entire article R&RE, p. 863, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-103 as it existed prior to 1984.

33-2-104. Nongame species - regulations. (1) The division shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations, the commission shall issue regulations and develop management programs designed to ensure the continued ability of nongame wildlife to perpetuate themselves successfully. Such regulations shall set forth species or subspecies of nongame wildlife which the commission deems in need of management pursuant to this section, giving their common and scientific names by species and, where necessary, by subspecies. The commission shall conduct ongoing investigations of nongame wildlife and may from time to time amend such regulations by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The commission shall by regulation establish limitations relating to the taking, possession, transportation, exportation, processing, sale or offering for sale, or shipment as may be deemed necessary to manage nongame wildlife.

(3) Except as provided in regulations issued by the commission, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it is also unlawful for any common or contract carrier to knowingly transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

Source: L. 84: Entire article R&RE, p. 863, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-104 as it existed prior to 1984.

33-2-105. Endangered or threatened species. (1) On the basis of investigations of nongame wildlife provided for in section 33-2-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, the Colorado water conservation board, the Colorado water and power development authority, water conservancy districts, and other water conservation districts of the state, and other water resource development agencies within the state, appropriate federal agencies, and other interested persons and organizations, the commission shall by regulation adopted pursuant to the procedures specified in sections 33-1-111 and 24-4-103, C.R.S., establish a list of those species and, where necessary, subspecies of wildlife indigenous to this state which are determined to be endangered or threatened within this state, giving their common and scientific names by species and, where necessary, by subspecies.

(2) The commission shall:

(a) Conduct, by July 1, 1986, and at least once every five years thereafter, a review of all species included in the state lists of endangered or threatened species established pursuant to subsection (1) of this section; and

(b) Determine on the basis of such review whether any such species should:

(I) Be removed from such list;

(II) Be changed in status from an endangered species to a threatened species; or

(III) Be changed in status from a threatened species to an endangered species.

(3) Except as otherwise provided in this article, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship and for any common or contract carrier to knowingly transport or receive for shipment any species or subspecies of wildlife appearing on the list of wildlife indigenous to this state determined to be endangered within the state pursuant to subsection (1) of this section.

(4) Except as otherwise provided in this article, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship and for any common or contract carrier to knowingly transport or receive for shipment any species or subspecies of wildlife appearing on the list of wildlife indigenous to this state determined to be threatened within the state pursuant to subsection (1) of this section.

Source: L. 84: Entire article R&RE, p. 863, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-105 as it existed prior to 1984.

33-2-105.5. Reintroduction of endangered species - legislative declaration.

(1) The general assembly determines and declares that pursuant to the tenth amendment of the United States constitution, the state of Colorado has primacy over affairs that are of statewide concern and that matters concerning the environment, including the introduction or reintroduction of species that are currently not found or no longer found in this state is a statewide concern and should be conducted by the state through specific legislation. Reintroduction drives enormous land use questions and impacts property and water rights throughout Colorado.

(2) Before any species may be introduced or reintroduced into this state through action by any state or local government entity, the general assembly shall act by bill to specifically name such species and to specify the manner of introduction or reintroduction. The species to be introduced or reintroduced shall be:

(a) Not, or no longer, found in this state; and

(b) A candidate for listing or has been placed in the threatened or endangered species list pursuant to the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531 et seq., as amended.

Source: L. 99: Entire section added, p. 415, § 1, effective October 15. **L. 2000:** (1) amended, p. 23, § 5, effective August 2.

33-2-105.6. Reintroduction of the bonytail fish and the black-footed ferret. (1) In accordance with section 33-2-105.5, the general assembly hereby determines that the following species are not currently found in the state and are listed under the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531 et seq., as amended, and therefore require approval by the general assembly prior to reintroduction by the division. The general assembly hereby approves the reintroduction of the following species into the state of Colorado:

(a) (I) The bonytail (*gila elegans*).

(II) The reintroduction of the bonytail shall be conducted consistent with the five-year stocking plan for endangered Colorado river fish species in Colorado, as approved by the Colorado river fishes recovery program biology committee on September 1, 1998, or as may be amended.

(b) (I) The black-footed ferret (*mustela nigripes*).

(II) The reintroduction of the black-footed ferret shall be conducted consistent with the approach described in the black-footed ferret cooperative management plan dated June, 1995, developed by the division, the United States fish and wildlife service, and the United States bureau of land management. The reintroduction program shall provide for regular updates for the local community on the status of the reintroduction and shall involve representatives of local government and affected interests in resolving issues that may arise during the reintroduction effort.

(2) Reintroduction of the species listed in subsection (1) of this section shall commence before December 31, 2002.

(3) The division shall submit annual reports, no later than January 15 of each year, to the house agriculture, livestock, and natural resources committee and the senate agriculture, natural resources, and energy committee on the status of the reintroduction of the bonytail and the black-footed ferret and the progress towards meeting the goals of the recovery program and the removal of the species from the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531 et seq., as amended.

(4) In addition to the requirements of paragraph (b) of subsection (1) of this section, the reintroduction of the black-footed ferret shall be conducted in accordance with the following requirements:

(a) Each annual report prepared pursuant to subsection (3) of this section shall include an assessment evaluating whether the reintroduction of the black-footed ferret will impair any use of private land or beneficial use of water existing at the time of such reintroduction. If the assessment in any annual report concludes that any such use of land will be impaired by reintroduction of the black-footed ferret, the annual report shall also describe the reason for the impact and possible actions to reduce such impact.

(b) Any effort to reintroduce the black-footed ferret in any areas outside the experimental population boundaries described in the black-footed ferret cooperative management plan dated June, 1995, shall require further legislative approval.

(c) The state of Colorado shall ensure enforcement of the provisions of the black-footed ferret cooperative management plan dated June, 1995, up to and including litigation if the memorandum of understanding between Colorado and any federal agency implementing such plan is violated.

(d) If requested, the state of Colorado shall relocate any black-footed ferrets within the state of Colorado that move outside of the experimental population boundaries described in the black-footed ferret cooperative management plan dated June, 1995, into the area originally designated in the plan.

(e) Nothing in the black-footed ferret cooperative management plan dated June, 1995, shall affect current prairie dog management efforts on private lands.

Source: L. 2000: Entire section added, p. 436, § 1, effective April 18.

33-2-105.7. Reintroduction of species - legislative declaration - report. (1) (a) As used in this section, unless the context otherwise requires, "introduction" means the release of a nonaquatic wildlife species that is currently not found or no longer found in this state into the environment of Colorado, and shall include reintroduction; except that introduction shall not include any nonaquatic wildlife species the actual initial release of which occurred prior to May 24, 2000, or any release that has previously been approved by the general assembly acting by bill.

(b) The general assembly determines and declares that the introduction of species is a matter of statewide concern and should be conducted by the state through specific legislation. Such introduction may cause substantial harm to the state's overall ecosystem, including native plants and animal wildlife. The introduction of wildlife species also has far-reaching impacts on benefits from the use of both public and private lands within the state.

(2) Before any wildlife species may be introduced, the department shall prepare a report that includes, at a minimum, the following information:

(a) The potential ecological and economic impacts, including whether the introduction of a wildlife species will prevent or impair the then-existing use or uses of private land, and the benefits of the introduction;

(b) The probable survival rates of the introduced animals;

(c) The possible impacts should the introduction not take place; and

(d) An assessment evaluating whether the introduction of the wildlife species will impair any use of private land or beneficial use of water existing at the time of such introduction. If the assessment concludes that any such use will be impaired by the introduction, the report shall also describe the reason for the impact and possible actions to reduce such impact.

(3) The department shall deliver the report prepared pursuant to subsection (2) of this section to the general assembly, in accordance with section 24-1-136 (9), C.R.S., within thirty days after its completion.

(4) The department shall annually prepare a report for each of the five years after an introduction occurs that shall include, at a minimum, the following information:

(a) The status of the introduction effort;

(b) A report on the estimated survival rates of the introduced wildlife species and their progeny;

(c) If the survival rate of the introduced wildlife species and their progeny is below the initial projected range, an assessment of why the survival rate is lower than expected and the steps that have been considered and put in place to increase survival rates; and

(d) The recovery goals and anticipated timelines of the recovery program.

Source: L. 2000: Entire section added, p. 812, § 1, effective May 24.

33-2-106. Management programs. (1) The division shall establish such programs including acquisition of land or aquatic habitat as are deemed necessary for management of nongame, endangered, or threatened wildlife.

(2) In carrying out programs authorized by this section, the division may enter into agreements with federal agencies or political subdivisions of this state or with private persons for administration and management of any area established under this section or utilized for management of nongame, endangered, or threatened wildlife.

(3) The commission may permit, under such terms and conditions as may be prescribed by regulation, the taking, possession, transportation, exportation, or shipment of species or subspecies of wildlife which appear on the state lists of endangered or threatened species for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(4) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species may be removed, captured, or destroyed but only pursuant to permit issued by the division and, where possible, by or under the supervision of an agent of the division. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth in this subsection (4) shall be set forth in regulations issued by the commission pursuant to section 33-2-104 (1).

Source: L. 84: Entire article R&RE, p. 864, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-8-106 as it existed prior to 1984.

ANNOTATION

Law reviews. For article, "Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado's Water Resources" which discusses endangered species legislation in Colo-

rado, see 55 U. Colo. L. Rev. 391 (1984). For article, "Property Rights and Endangered Species", see 61 U. Colo. L. Rev. 283 (1990).

33-2-107. Regulations. The commission shall issue such regulations as are necessary to carry out the purposes of this article.

Source: L. 84: Entire article R&RE, p. 865, § 1, effective January 1, 1985.

Editor’s note: This section is similar to former § 33-8-107 as it existed prior to 1984.

33-2-108. Funding. (Repealed)

Source: L. 84: Entire article R&RE, p. 865, § 1, effective January 1, 1985. L. 89: Entire section repealed, p. 1346, § 7, effective July 1.

Editor’s note: Prior to its repeal in 1989, this section was similar to former § 33-8-110 as it existed prior to 1984.

ARTICLE 3

Damage by Wildlife

Editor’s note: (1) This article was numbered as article 3 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Although § 62-3-10 was added in 1972 as the last section appearing in article 3 of chapter 62, C.R.S. 1963, this article was renumbered in the compilation of the Colorado Revised Statutes 1973.

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PART 1

GENERAL PROVISIONS

33-3-101. Definitions. As used in this article, unless the context otherwise requires: (1) “Division” means the division of parks and wildlife.

Source: L. 72: p. 332, § 22. C.R.S. 1963: § 62-3-10.

33-3-102. State’s liability for damage. The state of Colorado is liable for certain damages caused by wildlife, but only to the extent provided in this article.

Source: L. 69: R&RE, p. 408, § 1. C.R.S. 1963: § 62-3-1.

ANNOTATION

Applicability of article. This article applies only to those cases in which wildlife-caused harm does not constitute a compensable taking under § 15 of art. II, Colo. Const. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

State not liable for crops damaged by wild geese. Landowners unquestionably possess cog-

nizable property interest in their crops and residues but it does not follow, however, that mere state ownership of wild game exposes it to liability for crop losses caused by wild geese. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

33-3-103. No liability for damage - when. (1) The state shall not be liable for:

(a) Damage to livestock caused by coyotes, bobcats, or dogs. It is the intent of the general assembly that the division shall use whatever proper means are available to effectively minimize depredation to livestock by coyotes and bobcats.

(b) Damage to motor vehicles caused by wildlife;

(c) Injury to or the death of any person caused by wildlife;

(d) Damages, if the division has furnished to the claimant sufficient and appropriate damage prevention materials and the claimant has refused to accept or use such materials exclusively for game damage prevention, and if the provisions of section 33-3-103.5 have been complied with by the division and the claimant;

(e) Damages, if the claimant has willfully failed to maintain damage prevention materials throughout the normal life of such materials, and such materials have not been damaged or destroyed by wildlife;

(f) Damages caused by wildlife if the claimant has unreasonably restricted hunting on land under his control or has unreasonably restricted passage to other land by restricting access across land under his control. In determining whether or not there has been an unreasonable restriction on hunting or availability of access by the claimant, the division shall consider only whether or not such restriction has significantly and adversely reduced a necessary harvest of wildlife.

(g) Damages caused by wildlife, if claimant charges a fee in excess of five hundred dollars per person, per season, for the purpose of big game hunting access on or across claimant's property.

(2) (Deleted by amendment, L. 2009, (SB 09-024), ch. 323, p. 1723, § 1, effective June 1, 2009.)

Source: L. 69: R&RE, p. 409, § 1. C.R.S. 1963: § 62-3-2. L. 77: (1)(a) amended, p. 1525, § 10, effective January 1, 1978. L. 79: Entire section R&RE, p. 1214, § 9, effective June 21. L. 90: (2)(f) amended, p. 573, § 69, effective July 1. L. 91: (1)(g) amended, p. 1439, § 1, effective April 20. L. 2009: (1)(d), (1)(g), and (2) amended, (SB 09-024), ch. 323, p. 1723, § 1, effective June 1.

ANNOTATION

Law reviews. For comment, "The Watchtower Casts No Shadow: Nonliability of Federal and State Governments For Property Damage Inflicted By Wildlife", see 61 U. Colo. L. Rev. 427 (1990).

State not liable for crops damaged by wild geese. Landowners unquestionably possess cognizable property interest in their crops and residues but it does not follow, however, that mere

state ownership of wild game exposes it to liability for crop losses caused by wild geese. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

Immunity for wildlife on highway. This section is not implicitly amended or repealed by the dangerous condition of a highway exception in the sovereign immunity statute. *Deneau v. State*, 883 P.2d 567 (Colo. App. 1994).

33-3-103.5. Game damage prevention materials - definitions. (1) This section shall be applicable in determining the liability of the state under paragraph (e) of subsection (3) of this section and section 33-3-103 (1) (d) and (1) (e).

(2) (a) (I) Every landowner shall be eligible to receive sufficient and appropriate temporary game damage prevention materials pursuant to this section.

(II) Permanent game damage prevention materials shall be available only to a landowner who does not unreasonably restrict hunting of species likely to cause damage on land under the landowner's control or restrict the hunting of species likely to cause damage on any other lands by restricting access across lands under the landowner's control, and:

(A) Who charges not more than five hundred dollars per person, per season, for big game hunting access on or across the landowner's property; or

(B) Who charges a fee in excess of five hundred dollars per person, per season, for big game hunting access on or across the landowner's property, if the landowner has requested and been denied game damage prevention materials from the habitat partnership program created in section 33-1-110 (8) and the division determines that excessive game damage is occurring, and may continue to occur in the future.

(III) The division shall not deny a landowner game damage claims or game damage prevention materials on the grounds that the landowner received a voucher pursuant to the wildlife conservation landowner hunting preference program for wildlife habitat improvement under section 33-4-103 (3) (d).

(IV) As used in this section:

(A) "Temporary game damage prevention materials" means materials of an adequate substance that are utilized to protect private property for a period of time agreed upon by the landowner and the division. Such materials may include, but are not limited to, transferable panels or pyrotechnics.

(B) "Permanent game damage prevention materials" means materials of an adequate substance that are erected in such a way to protect private property for the expected normal life of the materials. The normal life of the materials shall be as specified in a written agreement between the landowner and the division.

(b) The division has the responsibility to supply useable, sufficient, and appropriate game damage prevention materials to a requesting landowner, and the landowner shall keep such materials in good repair throughout their normal life, if such materials have not been destroyed or damaged by wildlife.

(3) (a) The division shall respond to a landowner making an inquiry related to game damage within two business days after receiving the inquiry.

(b) (I) Within five business days after receiving a request for game damage prevention materials, the division shall consult with the landowner to discuss the sufficient and appropriate materials to prevent or mitigate the game damage. Temporary game damage prevention materials shall be delivered to the landowner within fifteen business days after the consultation, unless otherwise agreed to by the division and the landowner.

(II) For a landowner eligible to receive permanent game damage prevention materials pursuant to subparagraph (II) of paragraph (a) of subsection (2) of this section, such materials shall be provided within forty-five days after the date that the landowner makes the initial request for the materials.

(c) The division shall deliver game damage prevention materials to the specific site as directed by the landowner, if such delivery may be made by truck.

(d) When agreed upon by the landowner, the division may construct permanent stackyards or orchard fencing in those areas of high wildlife damage potential within the limitations of appropriation by the general assembly for that purpose.

(e) (I) If the division does not provide game damage prevention materials within the amount of time established by paragraph (b) of this subsection (3), the division shall have the sole responsibility to supply and erect the damage prevention materials, and the state shall be liable for game damages incurred on and after the date by which the division should have provided the game damage prevention materials.

(II) When erecting game damage prevention materials pursuant to subparagraph (I) of this paragraph (e), the division may use division employees, individuals under contract to the division, or voluntary workers. If the division uses voluntary workers to assist in erecting game damage prevention materials, the division shall keep in force workers' compensation insurance as necessary to protect the landowner from liability resulting from injuries or death of said voluntary workers while engaged in the erection of such game damage prevention materials. If the division uses contract workers to assist in erecting game damage prevention materials as provided in this section, the division shall require the

contractor to provide evidence of workers' compensation insurance as necessary to protect the landowner from liability resulting from injuries or death of said contract workers while engaged in the erection of such game damage prevention materials.

(4) If the game damage prevention materials that the division provides to a landowner fail to prevent game damage due to insufficiency or inappropriateness of such materials, or if the division's insufficient or inappropriate erection of such materials fail to prevent game damage, the state shall be liable for damages caused by such materials or erection.

Source: L. 2009: Entire section added, (SB 09-024), ch. 323, p. 1724, § 2, effective June 1.

33-3-104. State shall be liable - when. (1) Subject to the limitations contained in sections 33-3-103 (1) and 33-3-103.5, and in part 2 of this article, the state shall be liable only for:

(a) Damages to livestock or personal property used in the production of raw agricultural products, which under this article shall be no more than five thousand dollars per head of livestock injured or killed, caused by big game; except that damages to livestock shall be limited to physical trauma resulting in injury or death;

(b) Damages to real or personal property, when such damages are caused by wildlife that is being moved or is otherwise under the direct control of division personnel at the time the damage occurs;

(c) Damage to real or personal property caused by the use of damage prevention materials if the use of such materials or equipment is under the control of any personnel who are under the direction of division personnel at the time damage occurs;

(d) Damages caused by those species of wildlife enumerated in section 33-1-102 (2) to orchards, nurseries, crops under cultivation, and harvested crops, damages to lawful fences as defined in section 35-46-101 (1), C.R.S., when such damages exceed ten percent of the value of the specific fence involved, and damages to livestock forage in excess of ten percent of historic use levels for privately owned and fenced ranch or farm units which are specifically limited to hay meadows, pasture meadows, artificially seeded rangelands, and grazing land which is deferred to seasonal uses. Damages to aftermath on alfalfa shall be paid to the full extent of such damages without regard to historic numbers of wildlife. Historic levels shall be designated by the claimant at the time of making a claim. Historic levels shall be expressed in average numbers of wildlife present on the property in question based on the twenty-year period ending January 1, 1973. If the division does not agree with the claimant on normal historic levels or any element of a damage settlement, the matter shall be submitted to arbitration within ten days of notice by either party. The arbitration panel shall consist of one arbitrator chosen by the landowner, one arbitrator chosen by the division, and one arbitrator chosen by the other two arbitrators. If the two arbitrators cannot agree within ten days on a third arbitrator, a request by either party shall be made to the district court for the judicial district of the county in which the damage is located for appointment of a third impartial arbitrator. The division and the landowner shall equally share the cost of the use of the third arbitrator. Historic levels or any element settled by arbitration may be included in an appeal to a court of competent jurisdiction, and the court shall not be bound by the finding of the arbitration panel.

(2) Repealed.

(3) The burden of proof shall be with the claimant for all claims for damages enumerated in paragraph (d) of subsection (1) of this section, pursuant to rules established by the commission pertaining to wildlife damage.

(4) If the commission has not promulgated rules relating to damage by wildlife, pursuant to sections 33-1-104 and 33-1-108, the division shall not refuse to pay a claim for wildlife damage.

(5) If for any reason a pertinent rule of the commission relating to wildlife damage is declared void or suspended, the provisions of subsection (4) of this section shall not be applicable.

(6) For the year 1979, any damage claims received by the division after June 21, 1979, shall not be denied until and unless considered under the rules promulgated by the

commission relating to damage by wildlife. If such rules are not promulgated by January 1, 1980, the provisions of subsection (4) of this section shall apply.

(7) Repealed.

(8) All rules concerning damages by wildlife adopted or amended by the commission on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-4-108, C.R.S.

(9) Reimbursement for wildlife damages shall be reduced by the amount of claim awarded by an insurance company for the same damages.

Source: L. 69: R&RE, p. 409, § 1. C.R.S. 1963: § 62-3-3. L. 71: p. 596, § 1. L. 75: (1)(a) amended, p. 1306, § 5, effective July 14. L. 77: (1)(a) amended, p. 1541, § 1, effective January 1, 1978. L. 79: (1)(d) R&RE and (2) to (8) added, p. 1216, § 10, effective June 21. L. 80: (8) amended, p. 789, § 26, effective June 5. L. 81: (1)(d) amended, p. 1654, § 1, effective July 1. L. 83: (2)(a) amended, p. 2051, § 20, effective October 14. L. 84: (1)(d) R&RE. (2) and (7) repealed, and (9) added, pp. 926, 927. §§ 1, 5, 2, effective May 2. L. 85: (1)(d) and (4) amended, p. 1364, § 31, effective June 28. L. 93: IP(1) and (1)(d) amended, p. 1720, § 2, effective June 6. L. 2001: (1)(a) amended, p. 409, § 1, effective August 8. L. 2009: IP(1) amended, (SB 09-024), ch. 323, p. 1726, § 3, effective June 1.

Cross references: For the legislative declaration contained in the 1993 act amending the introductory portion to subsection (1) and subsection (1)(d), see section 1 of chapter 290, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For comment, "The Watchtower Casts No Shadow: Nonliability of Federal and State Governments For Property Damage Inflicted By Wildlife", see 61 U. Colo. L. Rev. 427 (1990).

Landowner not entitled to compensation for crop losses caused by wild geese. Losses of

\$250 per annum in crop damage due to geese choosing landowner's land as a flocking location after state had foreclosed hunting geese on landowner's property did not entitle landowner to compensation. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

33-3-105. Wildlife migration areas - division to keep records. It is the duty of the division to maintain records of areas used by wildlife for migration purposes, and the division shall furnish information concerning wildlife migration areas to persons requesting such information.

Source: L. 69: R&RE, p. 410, §1. C.R.S. 1963: § 62-3-4.

33-3-106. Excessive damage to property - permit to take wildlife - when - harassment by dogs. (1) (a) Where wildlife is causing excessive damage to property, as determined by the division after consultation with the property owner, the division is authorized to issue a permit to the property owner, the property owner's designee, or to such other person selected by the division to kill a specified number of the species of wildlife causing such excessive damage. Upon request by the property owner, whenever the wildlife causing the excessive damage exceeds the wildlife objective set by the division for that species for that geographical area for the current year, the division is encouraged to issue a permit under this section. Any determination by the division that the damage being caused is not excessive may, upon application by the property owner, be reviewed by the commission.

(b) No permit to take wildlife pursuant to this subsection (1) shall be issued or used in violation of any local restriction on firearm use.

(2) Any wildlife killed, as permitted under subsection (1) of this section, shall remain the property of the state and shall be field dressed promptly, and such killing shall be reported to the division within forty-eight hours; except that the killing of a bear or mountain lion shall be reported within five days.

(3) Nothing in this section shall make it unlawful to trap, kill, or otherwise dispose of bears, mountain lions, or dogs without a permit in situations when it is necessary to prevent them from inflicting death, damage, or injury to livestock, real property, a motor vehicle, or human life and additionally, in the case of dogs, when it is necessary to prevent them from inflicting death or injury to big game and to small game, birds, and mammals. Any wildlife killed as permitted under this subsection (3) shall remain the property of the state, and such killing shall be reported to the division within five days. The division may bring a civil action against the owner of any dog inflicting death or injury to any big game and to small game, birds, and mammals for the value of each game-animal injured or killed. The minimum value of each animal shall be as set forth in section 33-6-110.

(4) (Deleted by amendment, L. 2003, p. 1939, § 2, effective May 22, 2003.)

Source: L. 69: R&RE, p. 410, § 1. C.R.S. 1963: § 62-3-5. L. 73: p. 660, §§ 1, 2. L. 75: (3) amended, p. 1306, § 6, effective July 14. L. 85: (3) amended, p. 1364, § 32, effective June 28. L. 2003: (2) to (4) amended, p. 1939, § 2, effective May 22. L. 2009: (1) amended, (SB 09-024), ch. 323, p. 1727, § 4, effective June 1.

ANNOTATION

Landowner not entitled to compensation for crop losses caused by wild geese. Losses of \$250 per annum in crop damage due to geese choosing landowner's land as a flocking loca-

tion after state had foreclosed hunting geese on landowner's property did not entitle landowner to compensation. *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

33-3-107. Claims procedure. (1) When any person has sustained damages to property caused by any wildlife, he shall notify the division of such damages within ten days after the discovery thereof. In the case of recurring damage, the division shall be notified within ten days after the discovery of each new or different occurrence of damage.

(2) Proof of loss forms shall be filed within ninety days after the last notice of loss is submitted to the division under subsection (1) of this section. The division, within thirty days after the filing of such proof of loss forms, shall make an investigation of the alleged loss, and, where possible, shall attempt to reach an agreement with the claimant upon an amount of settlement. The commission may review settlement agreements between the division and the claimant and may disapprove any settlement which it finds to be unreasonable; but said review is not required in every case and the commission may determine that it will review only certain categories of settlements or that it will not review any settlements. The commission shall review all claims which the division recommends for denial and all claims upon which the division and claimant are unable to reach a settlement; except that a claimant whose claim is within the monetary jurisdictional limitations of the small claims division of county court may waive such review by the commission and commence an action which shall entitle such claimant to a trial de novo in the small claims division of the county court of the county in which the damage or any portion thereof is alleged to have occurred. Such waiver shall be in writing and shall be mailed to the commission within ten days after such claimant receives notification from the division of the denial of his claim, or within ten days after the claimant receives from the division an offer of settlement unacceptable to such claimant. The division may be represented by a full-time employee in small claims court.

(2.5) For payment to a claimant, the controller shall draw a warrant upon a voucher approved by the division and the state treasurer shall pay the amount of settlement out of the wildlife cash fund.

(3) The division shall furnish forms to be used for the notice and proof of loss required under this section.

Source: L. 69: R&RE, p. 410, § 1. C.R.S. 1963: § 62-3-6. L. 91: (2) amended and (2.5) added, p. 1439, § 2, effective April 20.

33-3-108. Review by the commission. If the commission reviews a claim pursuant to the provisions of section 33-3-107, the commission may either confirm a decision of the division denying a claim or may extend to the claimant an offer of settlement. If the claimant disagrees with the commission's determination or refuses to accept the commission's offer of settlement, the claimant may file an action for damages in the district or county court of the judicial district or county in which the damage or any portion thereof is alleged to have occurred. Such action shall be filed within sixty days after the claimant receives notice of denial by the commission, which notice shall set forth the reasons for denial, or within sixty days after the claimant receives an offer of settlement from the commission. If the action is not filed within said sixty-day period, such action shall be forever barred.

Source: L. 69: R&RE, p. 410, § 1. **C.R.S. 1963:** § 62-3-7. **L. 77:** Entire section R&RE, p. 1525, § 11, effective January 1, 1978. **L. 84:** Entire section amended, p. 927, § 3, effective May 2. **L. 91:** Entire section amended, p. 1440, § 3, effective April 20.

ANNOTATION

Arbitrators are final judges of both law and fact, and an award will not be reviewed or set aside for mistakes in either. *People ex rel. Kimball v. Crystal River Corp.*, 131 Colo. 163, 280 P.2d 429 (1955).

Procedure authorized by this section makes certiorari wholly inappropriate. *People ex rel. Kimball v. Crystal River Corp.*, 131 Colo. 163, 280 P.2d 429 (1955).

33-3-109. Review by commission waived. If a claimant waives the right to commission review pursuant to the provisions of section 33-3-107, such claimant may commence an action for damages and, in connection therewith, shall be entitled to a trial de novo in the small claims division of the county court of the county in which the damage or any portion thereof is alleged to have occurred. Such action shall be filed within sixty days after the claimant receives notice of denial by the division, which notice shall set forth the reasons for denial, or within sixty days after the claimant receives an offer of settlement from the division. If the action is not filed within said sixty-day period, such action shall be forever barred.

Source: L. 69: R&RE, p. 411, § 1. **C.R.S. 1963:** § 62-3-8. **L. 77:** Entire section R&RE, p. 1525, § 12, effective January 1, 1978. **L. 84:** Entire section amended, p. 927, § 4, effective May 2. **L. 91:** Entire section amended, p. 1440, § 4, effective April 20.

ANNOTATION

Owners of tree nursery had exhausted administrative remedies under this section regarding denial of liability by division of wildlife, and district court had jurisdiction to

consider owners' damage claims. *Stephens v. Colo. Div. of Wildlife*, 712 P.2d 1124 (Colo. App. 1985).

33-3-110. Payment of claim. A certified copy of the judgment of the district or county court shall be forwarded to the division, and, in the event the judgment includes an award to the claimant, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the division, and the state treasurer shall pay the same out of the wildlife cash fund.

Source: L. 69: R&RE, p. 411, § 1. **C.R.S. 1963:** § 62-3-9. **L. 77:** Entire section amended, p. 1526, § 13, effective January 1, 1978. **L. 91:** Entire section amended, p. 1441, § 5, effective April 20.

ANNOTATION

Applied in *People ex rel. Kimball v. Crystal River Corp.*, 131 Colo. 163, 280 P.2d 429 (1955); *Collopy v. Wildlife Comm'n*, 625 P.2d 994 (Colo. 1981).

33-3-111. Annual report to the general assembly. (1) Commencing with the second regular session of the sixty-seventh general assembly, the division shall report at least annually, by January 31 of each year, to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, on game damage and game damage prevention issues. Such report shall include, at a minimum:

(a) (I) The herd management objectives set by the division and whether those objectives are being met. In providing this information, the division shall supply the actual number of herd animals by game unit.

(II) If any of the herd management objectives of the division are not being met, the division shall set forth in detail its plans, strategies, and efforts that it is using or intends to use in order to achieve compliance with the objectives.

(b) The number of requests for game damage prevention materials, the timeliness of the division in responding to such requests, the quantity and types of temporary and permanent materials issued, the number of requests for materials denied, and, to the extent that such information is available, the adequacy of materials in preventing game damage;

(c) The number of permits to take wildlife requested pursuant to section 33-3-106, the number of permits issued, the amount of wildlife killed under such permits, the number of permits denied, and the reasons for denial;

(d) The number of claims for damages submitted under this section, how many of those claims were settled and the monetary amounts of the settlements, the number of claims pending at the time of the report, the number of claims denied, and the reasons for denial;

(e) Any other costs incurred by the division in administering this article.

Source: L. 2009: Entire section added, (SB 09-024), ch. 323, p. 1727, § 5, effective June 1.

PART 2

FORAGE LOSSES

Cross references: For the legislative declaration contained in the 1993 act enacting this part 2, see section 1 of chapter 290, Session Laws of Colorado 1993.

33-3-201. Scope of part - definitions. (1) This part 2 shall govern claims for damage arising from the foraging of wild ruminants on privately owned or leased private land and for which damage the state is liable under section 33-3-104 (1) (d). Except where inconsistent with a specific provision of this part 2, the provisions of part 1 of this article shall also apply to such claims.

(2) For purposes of this part 2, "wild ruminants" includes elk and other ruminants within the definition of big game as set forth in section 33-1-102 (2).

Source: L. 93: Entire part added, p. 1720, § 3, effective June 6.

33-3-202. Head counts. The claimant's head count of wild ruminants shall be made upon no less than twenty-four hours' notice to the division, which may arrange to have its personnel present when the count is made. The time of day at which the count is made shall be at the claimant's discretion. If the division chooses not to have personnel present, the claimant's head count shall be conclusive. Subsequent head counts may be made at intervals of ten days.

Source: L. 93: Entire part added, p. 1721, § 3, effective June 6.

33-3-203. Claims procedure. (1) When any person has sustained damage to live-stock forage caused by wild ruminants, such person shall notify the division of such damages within ten days after the discovery thereof. In the case of recurring damage, the division shall be notified within ten days after the discovery of each new or different occurrence of damage.

(2) (a) Proof of loss forms shall be filed within ninety days after the last notice of loss is submitted to the division under subsection (1) of this section. The division, within thirty days after the filing of such proof of loss forms, shall make an investigation of the alleged loss, and, where possible, shall attempt to reach an agreement with the claimant upon an amount of settlement. All such agreements shall be completed and the settlement amount paid in full within sixty days after terms and conditions have been agreed upon; otherwise, at the claimant's option, the matter shall proceed to arbitration or to court as provided in this article.

(b) (I) If the division does not agree with the claimant on normal historic levels, or any element of a damage settlement, the matter shall be submitted to arbitration within ten days of notice by either party unless the claimant waives arbitration. The arbitration panel shall consist of one arbitrator chosen by the landowner, one arbitrator chosen by the division, and one arbitrator chosen by the other two arbitrators. If the two arbitrators cannot agree within ten days on a third arbitrator, a request by either party shall be made to the district court for the judicial district of the county in which the damage is located for appointment of a third impartial arbitrator. The division and the landowner shall equally share the cost of the use of the third arbitrator.

(II) In any case which goes to arbitration, all arbitrators chosen shall reside within fifty miles of the subject property. The arbitration proceeding shall be conducted pursuant to part 2 of article 22 of title 13, C.R.S. The decision of the arbitration panel shall be binding and shall be subject to judicial review only for statutory compliance with the provisions of this article and the said act. The claimant or the division may seek such review by filing an action for same in the county or district court in the county or judicial district where the subject damage is alleged to have occurred within thirty days after receipt of the arbitration panel's decision.

(c) Any waiver of arbitration shall be in writing and shall be mailed to the division within ten days after the claimant receives notification from the division of the denial of the claim, or within ten days after the claimant receives from the division an offer of settlement unacceptable to such claimant.

(d) In adjudication of any claim, should the court find that the claimant has made or the division has contested the claim without a substantial legal or factual basis, the court shall award the other party reasonable attorney fees, not to exceed the actual amount incurred, upon the submission of satisfactory proof thereof.

(3) For payment to a claimant, the controller shall draw a warrant upon a voucher approved by the division and the state treasurer shall pay the amount of settlement out of the wildlife cash fund.

(4) The division shall furnish forms to be used for the notice and proof of loss required under this section.

Source: L. 93: Entire part added, p. 1721, § 3, effective June 6. L. 2004: (2)(b)(II) amended, p. 1732, § 4, effective August 4.

33-3-204. Waiver of arbitration - action for damages. If a claimant waives the right to arbitration pursuant to the provisions of section 33-3-203, the commission shall review the claim as provided in section 33-3-107. Such claimant may commence an action for damages and, in connection therewith, shall be entitled to a trial de novo in any court of the county in which the damage or any portion thereof is alleged to have occurred. The division may be represented by a full-time employee in small claims court. Such action shall be filed within sixty days after the claimant receives notice of denial by the commission, which

notice shall set forth the reasons for denial, or within sixty days after the claimant receives an offer of settlement from the commission. If the action is not filed within said sixty-day period, such action shall be forever barred.

Source: L. 93: Entire part added, p. 1722, § 3, effective June 6.

ARTICLE 4

Licenses, Certificates, and Fees

Editor's note: This article was numbered as article 11 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

33-4-101.	License agents - reports - board of claims - penalty for failure to account.	33-4-107.	Permit to collect for scientific purposes. (Repealed)
33-4-101.3.	Black bears - declaration of intent - spring season hunting prohibited - prohibited means of taking - penalty.	33-4-108.	Certificate of lawful possession. (Repealed)
33-4-102.	Types of licenses and fees - rules - repeal.	33-4-109.	Specimens may be held - when. (Repealed)
33-4-102.5.	Issuance of migratory waterfowl stamp - prohibition against hunting without stamp.	33-4-110.	Duplicate tags. (Repealed)
33-4-102.7.	Colorado wildlife habitat stamp - review committee - Colorado wildlife passport created - Colorado wildlife passport fund - rules - study - repeal.	33-4-111.	Taxidermists must have license. (Repealed)
33-4-103.	Landowner preference for hunting license - rules.	33-4-112.	License agents - reports - board of claims. (Repealed)
33-4-104.	Free licenses issued - members or veterans of armed forces - when - rules.	33-4-113.	Certificate of competency and safety - when necessary. (Repealed)
33-4-105.	Licenses for residents sixty-four years of age or over. (Repealed)	33-4-114.	Course in hunter safety and competency. (Repealed)
33-4-105.5.	Landowner preference for hunting license. (Repealed)	33-4-115.	Division of wildlife to coordinate statewide programs. (Repealed)
33-4-106.	Miscellaneous licenses, permits, stamps, cards, passes, and certificates - fees. (Repealed)	33-4-116.	Big game hunting licenses - auction or raffle - use of proceeds - rules.
		33-4-116.5.	Auction or raffle of deer, elk, and pronghorn licenses - use of proceeds. (Repealed)
		33-4-117.	Youth licenses - terminally ill hunters - special restrictions and privileges.
		33-4-118.	Hiking certificates. (Repealed)
		33-4-119.	Mobility-impaired hunters.
		33-4-120.	Wildlife management public education advisory council - creation.

33-4-101. License agents - reports - board of claims - penalty for failure to account.

(1) The director may designate sole proprietors, partnerships, or corporations as license agents to sell hunting, fishing, trapping, and other licenses of the division. License agents shall be paid a commission, in an amount to be determined by rule by the commission, on all moneys collected for licenses sold. All agents authorized to sell licenses shall keep accurate records of all sales of licenses and shall make such reports to the division regarding license sales as may be required by the division. Such agents shall be required to give evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., or a bond, in such amount as may be fixed by the division based upon performance criteria established by the

wildlife commission by rule, which may be less than the full value of consignment in an amount adequate to ensure the remittance of all moneys collected from such license sales, less amounts allowed as commissions, and the making of reports required by the division. The commission may promulgate rules for the establishment and cancellation of license agencies. All license moneys received shall be kept separate and apart from any other moneys of the agent authorized to sell licenses and shall at all times belong to the state. All moneys due from the sale of wildlife licenses shall belong to the state and shall draw interest at the rate of one and one-half percent per month from the date due.

(2) The executive director, state auditor, and attorney general, or their duly designated representatives, shall constitute a board of claims for the hearing of all claims for relief when any license agent is unable to account for licenses and claims that the same have been destroyed, lost, or stolen. The findings of the board of claims are subject to review pursuant to section 24-4-106, C.R.S. Claims for relief in an amount totaling three hundred dollars or less shall not be determined by the board of claims, except as otherwise provided in this section, but shall be settled by the division. If the division offers to make settlement and such settlement is not accepted by the claimant, the claimant may submit his claim to the board of claims.

(3) Every agent designated to sell licenses shall account for all licenses delivered to such agent. If any license agent is not able to account for any license, such agent shall be responsible for the maximum fee for which each unaccounted-for license could have been issued, except as provided in subsections (4) to (8) of this section.

(4) Any agent designated to sell licenses may make a claim under oath for relief from responsibility for licenses which have been lost, stolen, or destroyed and for which such agent is unable to account, but no claim for relief shall be considered unless the agent making the claim informs the division of such loss, theft, or destruction within thirty days after such loss, theft, or destruction is discovered, said notice to set forth in detail all pertinent information then known to the agent. Upon receipt of any claim for relief, it is the duty of the division to make an investigation of the claim as soon as practicable, and for that purpose the claimant shall make available such records, information, or other pertinent data as may be in his possession or under his control. A written report of such investigation shall be filed by the division with the board of claims.

(5) As soon as practicable after receipt of the investigator's report and in no event later than one hundred twenty days after receipt of notice of a claim for relief, the board of claims shall set a date for the hearing on such claim for relief, and the claimant may appear at the hearing if he so desires. The claimant shall be given not less than ten days' written notice of the date of the hearing, such notice to be mailed to his last-known address.

(6) The board of claims may give relief to any claimant in the following circumstances and subject to the following limitations:

(a) If the board of claims is satisfied that any licenses were destroyed due to fire, flood, act of God, or any other cause beyond the control of the claimant and that destruction was not due in part to his negligence, then the board of claims may entirely relieve the claimant of the responsibility to account for such licenses or make such lesser adjustment as the board of claims may deem proper.

(b) If the board of claims is satisfied that any licenses were either lost, stolen, or destroyed under circumstances other than those set forth in paragraph (a) of this subsection (6), the board of claims may, in its discretion, make an adjustment of the amount due for any such licenses. The board of claims, in determining what adjustment, if any, shall be allowed for any lost, stolen, or destroyed licenses, may consider the following:

(I) Whether or not, or the extent to which, the loss was due to the negligence or carelessness of the claimant in the handling of licenses, but no adjustment shall be made in the case of gross negligence or gross carelessness upon his part;

(II) Such other evidence as the board of claims may consider pertinent.

(7) The board of claims, in the event that it makes any adjustment upon a claim, may, in its discretion, require the use of such protection against the possibility of future loss, theft, or destruction of licenses as it may deem proper, including, but not limited to, the posting of corporate or personal surety bonds.

(8) It is the legislative intent of subsections (2) to (7) of this section to provide in proper cases for the relief of license agents where licenses have been lost, stolen, or destroyed, which relief, however, shall be strictly construed, it being the further intent of such sections to encourage the proper and careful handling of licenses by license agents.

(9) The commission may promulgate rules and regulations for the cash sale of licenses, at a price which is discounted five percent from the face value thereof, to license agents of the division for resale to the public at the face value stated on such a license. Only the license agents of the division in good standing may qualify to purchase and sell under this subsection (9); except that no evidence of financial responsibility shall be required to qualify under this subsection (9). A post or base exchange of the United States government located in Colorado may qualify as a license agent for the purpose of this subsection (9). Failure to comply with all applicable rules and regulations of the commission and lawful directives of the division regarding license agents shall be grounds for the suspension or termination of the license agency, and, upon suspension or termination, all unsold licenses shall be returned immediately to the division for return of cash in the amount paid by the license agent for the licenses. The commission, in connection with a program which it may adopt under this subsection (9), shall provide for redemption by the division, at least annually, of any unsold licenses in the amount paid by the license agent for such unsold licenses. The provisions of subsections (1) to (8) of this section, except the provisions of subsection (1) regarding the designation of license agents, shall not apply to licenses sold under this subsection (9).

(10) The commission may authorize certain employees to sell licenses for the face value thereof at the headquarters and regional offices of the division. Such employees are not entitled to five percent of the face value of the licenses and are not required to give evidence of financial responsibility. Such employees may make claims under oath for relief from responsibility for licenses or moneys which have been lost, stolen, or destroyed and for which the employees are unable to account in accordance with the provisions of subsections (4) to (8) of this section.

(11) Any license agent who fails, upon demand of the division, to account for licenses or who fails to pay over to the division or its authorized representative moneys received from the sales of licenses:

(a) When the amount in question is less than two hundred dollars, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment;

(b) When the amount in question is two hundred dollars or more, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., which punishment shall include a fine in an amount set out in section 18-1.3-401 (1) (a) (III), C.R.S.

Source: L. 69: R&RE, p. 434, § 1. C.R.S. 1963: § 62-11-1. L. 72: p. 332, § 29. L. 73: p. 647, § 7. L. 75: (1), (3), and (4) amended and (5) added, p. 1306, § 7, effective July 14. L. 76: (3) amended, p. 311, § 57, effective May 20. L. 77: (3) and (4) amended, p. 1526, § 14, effective January 1, 1978. L. 79: (3) amended, p. 1217, § 11, effective June 21; (4) amended and (6) added, p. 1226, § 4, effective January 1, 1980. L. 83: (3) amended and (4) repealed, pp. 1289, 1291, §§ 2, 8, 9, effective January 1, 1984. L. 84: Entire section R&RE, p. 917, § 3, effective January 1, 1985. L. 85: (11)(b) amended, p. 659, § 10, effective July 1. L. 87: (1), (9), and (10) amended, p. 484, § 29, effective July 1. L. 89: (11)(b) amended, p. 847, § 122, effective July 1. L. 94: (1) amended, p. 1578, § 3, effective May 31. L. 99: (1) and (11) amended, p. 1395, § 2, effective June 4. L. 2001: (1) amended, p. 206, § 1, effective March 28. L. 2002: (11)(b) amended, p. 1543, § 292, effective October 1. L. 2005: (1) and IP(11) amended, p. 474, § 6, effective January 1, 2006.

Editor's note: This section is similar to former § 33-4-112 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (11)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Applied in State, Dept. of Natural Res. v. Benjamin, 41 Colo. App. 520, 587 P.2d 1207 (1978).

33-4-101.3. Black bears - declaration of intent - spring season hunting prohibited - prohibited means of taking - penalty. (1) It is the intent of the voters of Colorado in adopting this measure to prohibit the taking of black bears when female black bears are rearing their cubs. It is the further intent of the voters of Colorado to promote the concept of fair chase in the taking of black bears by eliminating the use of bait and dogs. In considering proposed changes to the restrictions on the taking of black bears which are established in this measure, the Colorado general assembly shall take notice of the fact that this measure was adopted by a vote of the people at the 1992 general election.

(2) During the period from March 1 through September 1 of any calendar year, it is unlawful for any person to take a black bear by any means including but not limited to firearm or bow and arrow.

(3) It is unlawful for any person to take a black bear with the use of bait, or with the use of one or more dogs, at any time during any calendar year. In the event that a dog or dogs accidentally chases a black bear while the owner or person in control of such dog or dogs is in legal pursuit of other game, such owner or person in control of the dog or dogs shall not be charged with the illegal taking of a black bear so long as the dog or dogs are called off as soon as the mistake is realized and the black bear is not injured or killed.

(4) The provisions of this section shall not apply to employees or agents of the division of parks and wildlife or to field agents of the United States department of agriculture when such employees or agents are acting in their official capacity, nor shall this section apply to any person who lawfully takes a black bear in defense of livestock, real property, a motor vehicle, or human life pursuant to section 33-3-106.

(5) For purposes of this section, "bait" means to place, expose, deposit, distribute, or scatter salt, minerals, grain, animal parts, or other food, so as to constitute a lure, attraction, or enticement for black bears on or over any area where hunters are attempting to take black bears.

(6) Any person who violates any provision of this section is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S. In addition, persons convicted pursuant to this section shall have their wildlife license privileges suspended for five years and persons convicted of a second or subsequent offense pursuant to this section shall have their wildlife license privileges suspended permanently.

(7) For the purposes of this section, "agent" means any qualified individual trained in wildlife procedures and operating under the direction of the division of parks and wildlife.

Source: Initiated 92: Entire section added, § 1, effective January 14, 1993. **L. 2002:** (4) amended and (7) added, p. 695, § 1, effective May 29; (6) amended, p. 1544, § 293, effective October 1. **L. 2003:** (4) amended, p. 1940, § 3, effective May 22.

Editor's note: This section was added by an initiated measure, effective January 14, 1993, prohibiting the taking of black bears under certain circumstances. The vote count on the measure at the general election held November 3, 1992, was as follows:

FOR:	1,054,032
AGAINST:	458,260

Cross references: For the legislative declaration contained in the 2002 act amending subsection (6), see section 1 of chapter 318, Session Laws of Colorado 2002.

33-4-102. Types of licenses and fees - rules - repeal. (1) Except as otherwise provided in subsection (1.6) of this section, the division is authorized to issue the following resident and nonresident licenses and shall collect the following fees therefor:

	Fees	
	Resident	Nonresident
(a) to (p) Repealed.		
(q) Bonus trout stamps	\$11.00	\$11.00
(r) to (u) Repealed.		
(v) 3-year possession/hunting raptor license	\$100.00	Not available
(w) Annual possession/hunting raptor license	Not available	\$55.00
(x) Repealed.		
(y) Peregrine falcon capture license	\$200.00	Not available

(1.1) to (1.3) Repealed.

(1.4) The division is authorized to issue the following resident and nonresident licenses and shall collect the following fees therefor, except as otherwise provided pursuant to subsection (1.6) of this section:

	Fees	
	Resident	Nonresident
(a) Extra rod stamp	\$ 5.00	\$ 5.00
(b) Fishing - 1 day	8.00	8.00
(c) Fishing - 5 days	Not available	20.00
(d) Fishing - annual	25.00	55.00
(e) Senior annual fishing	Free	Not available
(f) Small game hunting	20.00	55.00
(g) Small game - 1 day	10.00	10.00
(h) Furbearer license	25.00	200.00
(i) (Deleted by amendment, L. 94, p. 1220, § 3, effective May 22, 1994.)		
(j) Turkey, fall	15.00	100.00
(j.3) Turkey, spring	20.00	100.00
(j.6) Turkey (youth)	10.00	75.00
(k) Combination fishing and small game hunting	40.00	Not available
(l) Pronghorn	30.00	270.00
(m) Bear, fall	40.00	450.00
(n) Repealed.		
(o) Deer	30.00	270.00
(p) Elk	45.00	450.00
(q) Mountain goat	250.00	1,500.00
(r) Moose	250.00	1,500.00
(s) Mountain lion	40.00	450.00
(t) Rocky mountain bighorn sheep	250.00	1,500.00
(u) Desert bighorn sheep	250.00	1,000.00
(v) (I) Resident low-income senior lifetime fishing	Free	Not available
(II) (Deleted by amendment, L. 97, p. 766, § 1, effective May 1, 1997.)		
(w) Youth big game (deer, elk, pronghorn)	10.00 each	100.00 each
(x) Youth small game hunting	1.00	1.00
(y) Repealed.		

(z)	Colorado wildlife habitat stamp, purchased in conjunction with the purchase of a hunting or fishing license	10.00	10.00
(aa)	"Lifetime" Colorado wildlife habitat stamp	300.00	300.00

(1.5) (Deleted by amendment, L. 2005, p. 469, § 1, effective January 1, 2006.)

(1.6) (a) By promulgation of appropriate rule, the commission may from time to time authorize the issuance of any of the licenses provided for in this section for a fee less than that specified in this section, and may by promulgation of appropriate rule later raise such license fee up to the statutory limit, when in the judgment of the commission one of the following conditions applies:

(I) When the commission determines that it would be beneficial to issue such license in conjunction with another type of license and creates a combination license;

(II) When the commission determines it is proper for management of the division or otherwise beneficial to the management of state wildlife resources. Licenses so discounted may be limited to certain geographic areas, by sex, or as otherwise deemed appropriate by the commission.

(III) When the commission determines that an activity is regulated at both the state and federal levels and that issuance of a multi-year state license or collection of a reduced state annual license fee, or both, would help to coordinate such state and federal regulation and reflect the administrative cost savings realized through such coordination;

(IV) When the commission determines pursuant to section 24-75-402 (3), C.R.S., that a reduction in the amount of the fee is necessary to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the cash fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(b) The nonresident big game fees described in subsection (1.4) of this section shall annually be adjusted in accordance with changes in the United States bureau of labor statistics consumer price index for the Denver-Boulder-Greeley consolidated metropolitan statistical area for all urban consumers and all goods or its successor index. Such adjustment shall not be effective until the commission notifies the joint budget committee of such adjustment.

(c) The commission may, by appropriate rule, set fees for Colorado wildlife passports pursuant to section 33-4-102.7 (4) (b) (I).

(1.7) Nothing in this section shall be construed to invalidate any senior lifetime license previously issued by the division.

(1.8) Any moneys realized as a result of the fee increases related to fishing specified in subsection (1.4) of this section shall be allocated for use in the fisheries and hatcheries presently operated by the division.

(1.9) (a) (I) The general assembly hereby finds, determines, and declares that:

(A) Service members returning from post-September 11, 2001, overseas contingency operations who have been injured during combat face a challenging period of rehabilitation upon their return to the United States;

(B) Many of these service members are so severely injured that they require medical assistance for many years, or even the rest of their lives, as they reenter mainstream life;

(C) Although the scope of care provided by the United States armed services wounded warrior programs varies with each service member, based on the needs of the individual, these service members may be assigned, upon return to Colorado, to a medical treatment facility such as Evans army hospital at Fort Carson, Colorado;

(D) Wounded warrior programs are direct efforts by the United States armed services to care for service members during their long transition from combat-related injury to civilian life and to provide assistance to those service members in recovery, rehabilitation, and reintegration that is worthy of their service and sacrifice; and

(E) For those wounded warriors who suffer injuries so severe that they will require intense, ongoing care or assistance for many years or the rest of their lives, a significant part

of the healing process is enabling and encouraging these service members to experience some of the recreational activities they enjoyed prior to their service-related injuries.

(II) The general assembly therefore recognizes the need to provide opportunities for Colorado’s severely injured “wounded warriors” to enjoy the natural resources of the state as part of their rehabilitative care. Furthermore, offering reduced-cost or free big game hunting licenses to such recovering service members is a small, but recognizable, acknowledgment of their selfless service and sacrifice.

(b) The commission may promulgate rules to reduce or eliminate big game license fees and establish a big game hunting license preference for members of the United States armed services wounded warrior programs who are residents of, or stationed in, Colorado and who have been so severely injured that they will require years of intense, ongoing care or assistance.

(c) As used in this subsection (1.9), “United States armed services wounded warrior programs” means:

- (I) The Army wounded warrior (AW2) program;
- (II) The Air Force wounded warrior (AFW2) program;
- (III) The Navy safe harbor program;
- (IV) The Coast Guard wounded warrior regiment; and
- (V) Any successor program administered by a branch of the United States armed services to provide individualized support for service members who have been severely injured in overseas contingency operations undertaken since September 11, 2001.

(d) The commission may adopt rules to implement this subsection (1.9), including rules defining “severely injured” and establishing residency requirements for service members eligible under this subsection (1.9).

(2) Except as otherwise provided in subsection (1.6) of this section, the division is authorized to issue the following special licenses and shall collect the following fees therefor:

	Fees
(a) Scientific collecting license for the collection of wildlife species outside of established seasons and bag limits	\$ 20.00
(b) Importation license, issued for the purpose of importing wildlife into the state	50.00
(c) Field trial license	15.00
(d) Commercial lake license, issued for the operation of privately owned lakes for purposes of charging customers to fish; no live fish or viable gametes may be sold or transported from the premises	150.00
(e) Private lake license, issued for the operation of privately owned lakes for the purpose of fishing when no fee is charged; no fish or gametes may be sold or live fish or viable gametes transported from the premises	10.00
(f) Commercial wildlife park license, issued for the operation of privately owned wildlife parks and for related buying, selling, or trading of lawfully acquired wildlife or for charging customers to hunt on such a park	100.00
(g) Noncommercial park license, issued to persons who wish to keep lawfully acquired native birds except raptors as pets	20.00
(h) (Deleted by amendment, L. 91, p. 199, § 4, effective June 7, 1991.)	
(i) Wildlife sanctuary license	100.00
(3) Any license issued by the division for which a fee is not provided in subsection (1) or (2) of this section shall not exceed forty dollars.	

(4) Repealed.

(5) Any person may obtain more than one one-day or five-day fishing license during a calendar year. The effective date shall appear on every such fishing license. Said date may be the date it is procured or any future date during the fishing season specified by the license.

(6) (a) Moneys received in payment for any licenses issued under this title shall not be refunded except for proven error committed by the division in issuing licenses or upon the death of a licensee in possession of a big game license if death occurs before the starting

date of the season specified on said license or if authorized by the director under rules of the commission.

(b) Repealed.

(7) Any person claiming residency in Colorado as set forth in section 33-1-102, for the purpose of purchasing a resident license of any kind, must produce evidence of such residency at the time of purchase.

(8) In the event of the loss, theft, or destruction of a small game, fishing, furbearer, or combination small game and fishing license, the person to whom the license was issued may purchase a new license from any license agency or may obtain a duplicate license from the division upon payment of a fee, not to exceed five dollars, to be established by the commission by rule and regulation and completion of an affidavit as set forth below. In the event of the loss, theft, or destruction of any other license issued by the division, the person to whom the license was issued may receive a duplicate license from the division upon payment of a fee of fifty percent of the cost of the original license, not to exceed twenty-five dollars, and completion of an affidavit stating where and by whom said license was issued and the circumstances under which said license was lost, stolen, or destroyed. In the event the division determines that the original license has been lost or destroyed in the mail, the person to whom the license was issued may obtain a duplicate license from the division without charge by submitting to the division a signed affidavit stating that such license was never received.

(8.5) (a) Except for the annual Colorado wildlife habitat stamp and the lifetime Colorado wildlife stamp, a surcharge of seventy-five cents shall be assessed on each license listed in subsection (1.4) of this section that is sold by the division or one of its license agents pursuant to section 33-4-101. Revenues derived from the assessment of such surcharge, together with any interest earned thereon, shall be deposited in the wildlife management public education fund created in section 33-1-112 (3.5) (a).

(b) to (e) (Deleted by amendment, L. 2005, p. 469, § 1, effective January 1, 2006.)

(9) All licenses issued pursuant to this section expire on the date written or printed thereon, unless otherwise provided by the commission or by any other law.

(10) Repealed.

(11) With respect to licenses which are issued in limited numbers for the taking of game wildlife, the division is authorized to collect from each license applicant a nonrefundable processing fee not to exceed three dollars.

(12) (a) A person holding a valid aquaculture facility permit pursuant to section 35-24.5-109, C.R.S., may charge a fee for fishing at the production facility; no state fishing license is required.

(b) Several satellite stations of a fish production facility may operate under one aquaculture license provided all such satellite stations are listed on such license.

(13) (a) The commission shall establish a license classification for zoological parks. Each licensed zoological park shall be subject to the following requirements:

(I) The primary purpose of the park shall be the exhibition of captive wild or exotic animals for the education of the general public; except that this subparagraph (I) shall not be construed to prohibit the carrying on of reasonable incidental activities such as propagation, purchase, sale, and exchange of animals;

(II) The park shall be operated under the direction of a professional staff that has generally recognized formal or practical training in the husbandry of the types of animals kept in the park;

(III) The park shall have a state-licensed veterinarian on staff or under contract with the park and available to provide professional consultation and care when needed;

(IV) The park shall maintain regular hours during which it is open to the public;

(V) The animals kept at the park shall be confined by at least one fence or other enclosure surrounding the area in which they are housed or displayed and by at least one additional fence, no less than eight feet in height, surrounding the perimeter of the park.

(b) A licensed zoological park may move animals within Colorado in connection with the buying, selling, exchanging, or loaning of such animals with another licensed or accredited zoological park or in connection with the export of such animals from Colorado.

(c) No licensed zoological park may import non-cervid ruminants or camelids into Colorado unless, in each such instance, the animal has been subjected to the following process:

(I) Before importation, the animal is tested for tuberculosis and found not to be infected;

(II) After such test, the animal is imported and held in isolation in an isolation facility for a continuous period of least sixty days; and

(III) After the end of such isolation period, the animal is again tested for tuberculosis. If the test result is negative, the animal may then be incorporated into the animal population of the park.

(d) Importation and testing of cervid animals by licensed zoological parks shall be subject to regulation by the division.

(e) A license issued to a zoological park shall cover the park and also other property used in conjunction with the park for the selling, buying, brokering, trading, or breeding of or caring for animals used at the park. Animals may be moved between the park and such other property as may be reasonably necessary for the operation of the park.

(f) The annual fee for a zoological park license shall not exceed the annual fee for a commercial park license.

(g) (I) Except as provided in subparagraph (II) of this paragraph (g), this subsection (13) does not apply to any zoological park that is accredited by the American zoo and aquarium association. Any intrastate transfer and movement of wildlife by a zoological park accredited by the American zoo and aquarium association to another zoological park accredited by the American zoo and aquarium association is not subject to the rules of the commission regarding movement and disease testing.

(II) Any intrastate transfer and movement of wildlife by a zoological park accredited by the American zoo and aquarium association to any person or entity not accredited by the American zoo and aquarium association is subject to the rules of the commission regarding movement and disease testing.

(14) (a) The commission shall establish a license classification for wildlife sanctuaries. Each license for a wildlife sanctuary shall be subject to the following requirements:

(I) The purpose of the wildlife sanctuary shall be to operate as a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wildlife are provided care for their lifetime;

(II) The wildlife sanctuary shall be operated under the direction of a professional staff that has generally-recognized formal or practical training in the husbandry of the types of wildlife kept at the sanctuary; and

(III) The wildlife sanctuary shall have a state-licensed veterinarian on staff or under contract with the sanctuary and available to provide professional consultation and care when needed.

(b) An application for a license for a wildlife sanctuary shall include the following:

(I) The name, complete street address, mailing address if different from the street address, and telephone number of the facility;

(II) Evidence of the wildlife sanctuary's status under section 501 (c) (3) of the federal "Internal Revenue Code";

(III) The specific location where wildlife is housed;

(IV) The current wildlife inventory, including the common and scientific name, gender, age, and origin of each animal; and

(V) A signed statement by a licensed veterinarian stating the veterinarian is the veterinarian of record for the applicant and the veterinarian's complete address, telephone number, and license number. The veterinarian shall certify that the veterinarian has observed each of the applicant's animals at least once during the previous three months and that the wildlife have been appropriately immunized and cared for.

(c) The annual fee for a license for a wildlife sanctuary shall not exceed one hundred dollars.

(15) Notwithstanding any provision of this article to the contrary, revenue generated from the fees increased by House Bill 05-1266, enacted at the first regular session of the sixty-fifth general assembly, shall be used to implement key priorities in the commission's strategic plan.

Source: **L. 69:** R&RE, p. 435, § 1. **C.R.S. 1963:** § 62-11-2. **L. 72:** p. 333, § 30. **L. 75:** Entire section R&RE, p. 1317, § 1, effective July 14. **L. 77:** (1)(g) and (1)(h) amended, p. 1541, § 2, effective January 1, 1978. **L. 79:** (1)(s) and (2) amended and (4) added, p. 1236, § 1, effective January 1, 1980. **L. 82:** (1)(s) and (2) RC&RE, p. 518, § 1, effective March 11. **L. 83:** Entire section R&RE, p. 1287, § 1, effective January 1, 1984. **L. 84:** (4) and (7) amended and (10) repealed, pp. 920, 925, §§ 4, 19, effective January 1, 1985. **L. 87:** (11) added, p. 1268, § 1, effective January 1, 1988. **L. 89:** (1.1) to (1.8) added and (5) and (8) amended, pp. 1343, 1345, §§ 4, 5, effective July 1; (1)(x) added, p. 1347, § 1, effective February 1, 1990. **L. 90:** (2)(d) and (2)(e) amended and (2)(h) and (12) added, p. 1530, §§ 1, 2, effective January 1, 1991. **L. 91:** (6) amended, p. 1412, § 1, effective April 4; (4) repealed, p. 1920, § 47, effective June 1; (2)(h) and (12)(a) amended, p. 199, § 4, effective June 7. **Initiated 92:** (1)(n) repealed, effective January 14, 1993. **L. 93:** (1.4)(v) added, p. 431, § 2, effective April 19. **L. 94:** (1.4)(i) amended and (1.4)(w) and (1.4)(x) added, p. 1220, § 3, effective May 22; (1.4)(n) repealed, p. 1644, § 73, effective May 31; (1.6)(c) and (13) added and (6)(a) amended, pp. 1578, 1579, §§ 4, 5, effective May 31. **L. 95:** (13)(b) amended and (13)(g) added, p. 17, § 1, effective March 9. **L. 97:** (1.4)(v) amended, p. 766, § 1, effective May 1. **L. 98:** IP(1), (1.5), (1.6), and IP(2) amended, p. 1338, § 57, effective June 1. **L. 99:** (8.5) added, p. 1396, § 3, effective June 4. **L. 2000:** (1.4)(l), (1.4)(m), (1.4)(o) to (1.4)(t), (1.4)(w), and (1.6) amended, p. 1405, § 1, effective May 30. **L. 2001:** IP(1.6)(a) and (1.6)(a)(II) amended, p. 40, § 1, effective March 11. **L. 2003:** IP(1.4) and (1.4)(x) amended, p. 1031, § 8, effective July 1. **L. 2004:** (2)(i) and (14) added, p. 1324, §§ 4, 5, effective August 4. **L. 2005:** (1)(v), (1)(w), (1.4), (1.5), (1.6)(b), (3), and (8.5) amended and (1)(y) and (15) added, pp. 469, 472, §§ 1, 2, effective January 1, 2006; (1.4)(v)(I) amended, p. 780, § 68, effective January 1, 2006. **L. 2009:** (1.4)(y) amended and (1.6)(c) added, (SB 09-235), ch. 388, p. 2097, §§ 4, 3, effective July 1, 2010; (1.4)(z) and (1.4)(aa) amended, (SB 09-235), ch. 388, p. 2096, §§ 2, 1, effective April 1, 2011. **L. 2010:** (1.9) added, (SB 10-211), ch. 292, p. 1354, § 1, effective May 26; (6)(b) repealed, (HB 10-1422), ch. 419, p. 2120, § 169, effective August 11. **L. 2012:** (9) amended, (HB 12-1317), ch. 248, p. 1208, § 19, effective June 4.

Editor's note: (1) This section is similar to former § 33-4-106 as it existed prior to 1984.

(2) In 1992, an initiated measure prohibiting the taking of black bears from March 1 to September 1 passed. Although the initiated measure repealed subsection (1)(n), the fee for spring bear hunting was contained in subsection (1.2)(n) until January 1, 1991, and in subsection (1.4)(n) beginning January 1, 1991. Subsection (1.4)(n) was subsequently repealed by Senate Bill 94-206 to carry out the intent of the initiated measure.

(3) The vote count for the measure at the general election held November 3, 1992, was as follows:

FOR: 1,054,032

AGAINST: 458,260

(4) Subsection (4) provided for the repeal of subsections (1)(s) and (2), effective January 1, 1982. (See L. 79, p. 1236.) Subsection (1.1) provided for the repeal of subsections (1)(a) to (1)(p), (1)(r) to (1)(u), and (1.1), effective January 1, 1990. (See L. 89, p. 1343.) Subsection (1.3) provided for the repeal of subsections (1.2) and (1.3), effective January 1, 1991. (See L. 89, p. 1343.) Subsection (1)(x)(II) provided for the repeal of subsection (1)(x), effective July 1, 1994. (See L. 89, p. 1347.) Subsection (1.4)(y)(II) provided for the repeal of subsection (1.4)(y), effective July 1, 2010. (See L. 2009, p. 2097.)

(5) Amendments to subsection (1.4)(v) by House Bill 05-1266 and House Bill 05-1337 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1.4)(i) and enacting subsections (1.4)(w) and (1.4)(x), see section 1 of chapter 209, Session Laws of Colorado 1994.

ANNOTATION

This section permits aliens to procure and use big game licenses. *Herzig v. Feast*, 127 Colo. 564, 259 P.2d 288 (1953).

33-4-102.5. Issuance of migratory waterfowl stamp - prohibition against hunting without stamp. (1) As used in this section, unless the context otherwise requires, "migratory waterfowl" means any wild goose or duck.

(2) All persons sixteen years of age or older shall procure a state migratory waterfowl stamp before hunting or taking any migratory waterfowl within Colorado. Such stamp shall be in the possession of the person while hunting or taking any migratory waterfowl.

(3) (a) The fee for each stamp shall be five dollars, and the stamp shall remain valid through the last day of June following its issuance. Each stamp shall be validated by the signature of the licensee written across the face of the stamp.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (3), the commission by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(4) The commission may enter into a contract with a nonprofit waterfowl conservation organization for the purpose of providing the form and design of the migratory waterfowl stamp. Such contract shall provide that such nonprofit waterfowl conservation organization shall select a form and design. At least one of the alternative pieces of artwork considered for final selection shall be the work of an artist who is a resident of Colorado. In addition, such contract shall designate the ownership of the publication rights for any art prints or other facsimiles of the migratory waterfowl stamp and the disposition of any proceeds. The division shall not be an eligible contractor, unless no contract can be negotiated with a nonprofit waterfowl conservation organization.

(5) All moneys received pursuant to the issuance of the migratory waterfowl stamp shall be used for the sole benefit of migratory waterfowl habitats and shall be subject to an annual appropriation.

(6) Repealed.

Source: **L. 89:** Entire section added, p. 1347, § 2, effective February 1, 1990. **L. 93:** (6) repealed, p. 507, § 1, effective April 26. **L. 94:** (4) amended, p. 1580, § 6, effective May 31. **L. 98:** (3) amended, p. 1339, § 58, effective June 1.

33-4-102.7. Colorado wildlife habitat stamp - review committee - Colorado wildlife passport created - Colorado wildlife passport fund - rules - study - repeal. (1) The general assembly hereby finds, determines, and declares that:

(a) Protecting wildlife habitat and obtaining public access are important elements to preserving wildlife and wildlife-related recreational opportunities in Colorado;

(b) The general assembly specifically recognizes that hunting of big game species is an activity that hundreds of thousands of residents and visitors to Colorado enjoy, which contributes significantly to state and local economies; and

(c) Priorities for the expenditure of funds generated from the sale of habitat stamps and Colorado wildlife passports shall include protecting big game winter range and migration corridors, acquiring public access to wildlife-related recreation, including fishing, hunting, and wildlife viewing, protecting habitat for species of concern, and preserving the diversity of wildlife enjoyed by Coloradans.

(1.5) A person eighteen years of age or older and under sixty-five years of age shall purchase a Colorado wildlife habitat stamp, or shall have purchased a lifetime Colorado wildlife habitat stamp, when applying for or purchasing a hunting or fishing license. No habitat stamp purchase is required prior to application for or purchase of such person's first two one-day hunting or fishing licenses, but a habitat stamp shall be purchased prior to applying for or purchasing a third one-day hunting or fishing license. No person is required to purchase more than one Colorado wildlife habitat stamp within a twelve-month period. Any person acquiring a license issued pursuant to section 33-4-104 and any person who is mobility-impaired, as defined by commission rules, is exempt from the requirement to purchase a Colorado wildlife habitat stamp.

(2) Such stamp, or an authorized facsimile of such stamp, shall be in the possession of the person while hunting or fishing.

(3) Fees for each stamp shall be as established in section 33-4-102 (1.4).

(4) (a) (I) All moneys received pursuant to the issuance of the Colorado wildlife habitat stamp shall be used for the benefit of wildlife habitat or access to wildlife habitat, including costs associated with the operation and maintenance, such as weed control and fencing, of lands under the Colorado wildlife habitat protection program administered by the division. Revenues collected from the sale of the stamp are subject to annual appropriation. The Colorado wildlife habitat stamp review committee shall annually review proposed projects for expenditure of Colorado wildlife habitat stamp funds, including projects proposed pursuant to subparagraph (II) of this paragraph (a), and make recommendations to the director and the commission. In consultation with the habitat stamp committee, the commission shall, in its discretion, ensure that sufficient priority is given to improve access for anglers to the waters of the state and to conserve and protect winter range and vital habitats for deer, elk, and other big game wildlife species in the allocation of revenues pursuant to this section.

(II) Five hundred thousand dollars of moneys received from issuance of Colorado wildlife habitat stamps shall be made available annually for use by the Colorado water conservation board for the purposes and under such conditions described in this subparagraph (II). In order to qualify for habitat stamp moneys under this subparagraph (II), the Colorado water conservation board must have expended all moneys available for the costs of acquiring water, water rights, and interests in water for instream flow use from the moneys appropriated from the Colorado water conservation board construction fund for the current fiscal year pursuant to section 37-60-123.7, C.R.S. In such case, the Colorado water conservation board shall apply to the commission and the director for all or a portion of the five hundred thousand dollars, as needed, to acquire water, water rights, or interests in water pursuant to section 37-92-102 (3), C.R.S., and subject to the limitations on expenditures set forth in section 37-60-123.7, C.R.S. The commission may approve the application if, in the judgment of the commission, it is necessary, suitable, or proper for wildlife purposes or for the preservation or conservation of wildlife. Any approval shall contain a stipulation that the Colorado water conservation board return any excess or unexpended habitat stamp moneys, which moneys shall then be used toward the purposes set forth in subparagraph (I) of this paragraph (a).

(b) (I) On and after July 1, 2010, the commission is authorized to issue a Colorado wildlife passport, for which it may, by rule, charge a fee of not more than twenty-five dollars. The amount charged for such passport shall include three dollars for the purchase of a Colorado outdoor recreation search and rescue card.

(II) There is hereby created in the state treasury the Colorado wildlife passport fund, referred to in this subparagraph (II) as the "fund", which fund shall consist of moneys received from issuance of Colorado wildlife passports pursuant to subparagraph (I) of this paragraph (b) and moneys otherwise donated to the habitat stamp program in the division. Moneys in the fund are subject to annual appropriation and may be used for costs associated with the operation and maintenance of lands under the Colorado wildlife habitat protection program administered by the division, to market sales of Colorado wildlife passports or otherwise encourage contributions for habitat protection or enhancement, and for the acquisition of interests in real property pursuant to paragraph (c) of this subsection (4). Any balance remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be deposited in or transferred to the general fund or any other fund.

(c) Real property interest acquisitions made by the commission pursuant to this section shall emphasize the acquisition of easements and ensure that all other avenues are pursued prior to fee simple acquisition. Conservation easements, as described in section 38-30.5-104 (2), C.R.S., and fee simple title purchases are allowed. All fee simple title purchases made with revenues collected pursuant to this section, not including purchases of water for maintenance or enhancement of aquatic habitats, such as minimum storage pools or direct flow rights purchased specifically to protect habitat, shall be primarily for the purpose of providing access to the public for wildlife-related recreation, and shall be made available to the public for hunting or fishing, subject to commission rules. The commission shall not use

the power of eminent domain to obtain fee simple title or a conservation easement on real property. The commission shall comply with a seller's agreement or sections 33-1-105 and 33-1-105.5 prior to purchasing real property.

(d) No third-party conservation easement shall be obtained using proceeds from the sale of habitat stamps unless the requesting organization contributes at least fifteen percent of the purchase price of the easement or fifteen percent of the purchase price is secured using other sources of nondivision funding; except that, upon recommendation by the Colorado wildlife habitat stamp committee, the commission may approve the application of moneys from the Colorado wildlife passport fund pursuant to paragraph (b) of this subsection (4) toward all or a portion of said fifteen percent; however, if, in the commission's discretion, sufficient hunting or fishing access is provided, the fifteen percent contribution requirement may be waived.

(5) The Colorado wildlife habitat stamp committee is hereby created. The committee shall be composed of four sports persons; two representatives of national or regionally recognized conservation organizations whose missions are focused on nongame wildlife and whose membership is composed primarily of nongame wildlife users; two landowners actively engaged in agriculture; one citizen at large; and two division of parks and wildlife representatives as ex officio members, at least one of whom shall be a wildlife biologist. The sports persons shall be representative of the four quadrants of the state. Members shall be appointed by the governor and confirmed by the senate. Staggered appointments shall be made so that not more than two members' terms expire in any one year, and thereafter appointments shall be for terms of four years each. Members shall be limited to two consecutive four-year terms.

(6) The commission may enter into a contract with a nonprofit conservation organization for the purpose of providing the form and design of the Colorado wildlife habitat stamp. Such contract shall provide that such nonprofit conservation organization shall select a form and design. At least one of the alternative pieces of artwork considered for final selection shall be the work of an artist who is a resident of Colorado. In addition, such contract shall designate the ownership of the publication rights for any art prints or other facsimiles of the Colorado wildlife habitat stamp and the disposition of any proceeds. The division shall not be an eligible contractor unless no contract can be negotiated with a nonprofit conservation organization.

(7) The commission may adopt rules concerning the Colorado wildlife habitat stamp.

(8) (a) This section is repealed, effective December 31, 2013.

(b) Prior to such repeal, the committee created in this section shall be reviewed as provided for in section 2-3-1203, C.R.S.

(9) During the 2010 regular session of the general assembly, the house agriculture, livestock, and natural resources committee and the senate agriculture and natural resources committee, or their successor committees, shall meet jointly to study this section and the issues raised by the reengrossed version of Senate Bill 09-235. The committees shall meet as often as necessary, and at least once prior to June 1, 2010.

Source: L. 2005: Entire section added, p. 472, § 3, effective January 1, 2006. **L. 2009:** (2) amended and (9) added, (SB 09-235), ch. 388, pp. 2097, 2100, §§ 5, 6, effective August 5; (1), (4), and (8) amended and (1.5) added, (SB 09-235), ch. 388, p. 2097, § 5, effective July 1, 2010. **L. 2012:** (1.5), (4)(a)(I), and (4)(c) amended, (HB 12-1317), ch. 248, p. 1208, § 20, effective June 4.

33-4-103. Landowner preference for hunting license - rules. (1) Any landowner in Colorado is entitled to landowner preference for licenses permitting the hunting of deer, elk, or pronghorn when the following qualifications are met:

(a) The applicant for a preference is an owner as shown by a recorded deed of a parcel of agricultural land of one hundred sixty acres or more. In the event that the owner is a legal entity or such ownership is in two or more individual names, only two individuals, as designated by such legal entity or multiple ownership, shall be eligible for the preference.

(b) The land was inhabited by the species for which a license preference is requested during the greater portion of the year previous to the application.

(c) Application for a license preference, including authority to transfer the license preference if applicable, is made concurrent with the submittal of an application for the desired license on forms provided by the division.

(d) The applicant for a license preference submits no more than one such application per species per calendar year.

(e) All licenses permitting firearm hunting of the species for which a license preference is requested are limited in number by commission regulation in the area where the land is located.

(2) A landowner license preference may be transferred to any person who is eligible for a big game license. Up to fifteen percent of the number of licenses established for each management area where firearm hunting licenses are totally limited shall be made available for purchase by landowners who meet the qualifications of this section. Licenses not applied for by landowners within the time specified therefor shall be made available to the general public. Landowners receiving licenses pursuant to this section shall allow hunting on their land to properly licensed hunters, subject to the limitation of a reasonable number of such hunters.

(3) (a) The general assembly hereby finds, determines, and declares that the wildlife resources of the state are in danger of decline from increasing population pressures and the loss of wildlife habitat. In order to encourage private landowners to provide habitat for wildlife, discourage the harboring of game animals on private lands during public hunting seasons, and relieve hunting pressure on public lands by increasing game hunting on private lands, the general assembly finds that it is necessary to provide an incentive-based system to landowners to provide habitat for wildlife through a hunting license allocation program that allows hunters access to the state's wildlife under the cooperative control of the private landowner.

(b) As an alternative to the landowner license preference program established in subsections (1) and (2) of this section, and within the fifteen percent limit established for limited license units, a landowner who is an owner as shown by a recorded deed of a parcel of agricultural land of one hundred sixty acres or more is eligible to participate under this subsection (3) in the wildlife conservation landowner hunting preference program for wildlife habitat improvement, hereinafter referred to as the "wildlife conservation application program" or "program". This program is designed to encourage hunter access to private land by enabling landowners to apply for licenses using applications based upon land ownership and benefit to wildlife.

(c) (I) A landowner that applies to participate in the wildlife conservation application program shall have issued to that landowner applications for licenses permitting the hunting of deer, elk, pronghorn, and such other species, except for moose, rocky mountain big horn sheep, desert big horn sheep, and rocky mountain goat, as determined by the commission to meet animal management objectives for the game management unit in which the property lies, as long as such species inhabited the land for which a license is requested during the greater portion of the year previous to the application. These applications shall be issued under the restrictions set forth in this subsection (3) and as a first priority for licenses over the preferences issued under subsections (1) and (2) of this section. Fifteen percent of the total number of licenses established for the game management unit where firearm hunting licenses are totally limited for the species for which the license is requested shall be made available to landowners who meet the qualifications of this section.

(II) The applications available under this subsection (3) shall be allocated to any participant based upon the following schedule:

(A) For owners of one hundred sixty to six hundred thirty-nine acres, one application;

(B) For owners of six hundred forty to one thousand one hundred ninety-nine acres, two applications;

(C) For owners of one thousand two hundred acres to two thousand three hundred ninety-nine acres, three applications;

(D) For owners of two thousand four hundred acres to three thousand nine hundred ninety-nine acres, four applications;

(E) For each additional one thousand acres an additional application shall be allocated up to a maximum of six applications for owners of acreage in excess of six thousand acres.

(III) The commission may by rule allow for the issuance of additional applications to landowners in consideration of the provision of valuable game habitat, the provision of habitat management, the provision of voluntary access to public hunting, or other factors, to achieve game management objectives.

(d) In addition to the limitation on the number of applications available under the program as set forth in subparagraph (II) of paragraph (c) of this subsection (3), the program shall have the following additional requirements:

(I) The commission may by rule provide for the issuance of licenses in addition to the method set forth in paragraph (c) of this subsection (3) based upon game management objectives. If the commission decides to establish such rules, the commission shall work towards establishing and maintaining at least two different types of management programs under this subparagraph (I): Areas on the eastern plains east of interstate highway 25 based upon large percentages of private land ownership; and areas specifically managed for quality animal hunting or quality hunting experience. Any additional licenses issued pursuant to this subparagraph (I) shall be restricted to private lands, unless the commission exempts any intermingled lands from such requirement.

(II) Successful applicants under this subsection (3) will receive a voucher that may be transferred to any person who is eligible for a big game license for that species to be used for the purchase of a license to be used only within the applicant's game management unit for that species.

(III) Where an application is being submitted under the program in those game management units where firearm hunting licenses are totally limited for the species for which an application is being submitted, the landowner whose application does not yield all licenses set forth in subparagraph (II) of paragraph (c) of this subsection (3) for the current season shall be in priority for application preference in the succeeding year.

(IV) Hunting seasons for male licenses issued under this program shall be concurrent with public hunting seasons or designated by the commission to meet game management objectives.

(V) For purposes of antlerless management, by rule, the commission may require, for game management objectives, as a condition to participation in the program, that landowners allow hunting on their land by properly licensed hunters for the species that male licenses were issued to landowners under the program, using division-published male/female ratios for game management purposes for the applicable game management unit or data analysis unit. Such hunts shall be conducted during a separate season. Vouchers for such licenses shall be issued to landowners determined eligible, and the landowner shall ensure that all such vouchers are distributed to eligible hunters. The landowner shall not charge an access fee of more than twenty-five dollars to participate in such hunts.

(VI) In those game management units where hunting is totally limited for a species and the private landowner pool of license preferences and applications does not use the number of landowner licenses established for a species for that management area, then those unused licenses shall be made available to private landowners in that particular game management unit or data analysis unit as a first priority before becoming available to the general public hunter.

(e) The commission shall adopt rules to implement this section prior to July 1, 2001.

Source: L. 69: R&RE, p. 436, § 1. C.R.S. 1963: § 62-11-3. L. 72: p. 333, § 31. L. 75: Entire section amended, p. 1307, § 8, effective July 14. L. 84: Entire section R&RE, p. 920, § 5, effective January 1, 1985. L. 2000: (3) added, p. 1590, § 1, effective June 1. L. 2005: IP(1) and (3)(c)(I) amended, p. 475, § 7, effective January 1, 2006. L. 2008: (3)(d)(I) amended, p. 535, § 2, effective August 5.

Editor's note: This section is similar to former § 33-4-105.5 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (3)(d)(I), see section 1 of chapter 158, Session Laws of Colorado 2008.

33-4-104. Free licenses issued - members or veterans of armed forces - when - rules. (1) Any active or retired member of the United States armed forces while stationed

as a resident patient at any United States armed forces hospital or convalescent station located within Colorado, any resident patient at a veterans administration hospital and resident patients of any state institution for the treatment of persons with mental illness or other mental health institution in Colorado while under supervision of a proper staff member thereof, and any resident who is totally and permanently disabled as determined by the social security administration or the division of labor or pursuant to rule or regulation of the commission may obtain a fishing license free of charge, valid for taking fish during the period of residency only, under rules and regulations of the commission.

(2) Any Colorado resident on active duty outside this state with any branch of the armed forces of the United States may obtain, from the division of parks and wildlife, a fishing license free of charge, valid for taking fish while such person is in this state on temporary leave from such duty, but not to exceed a total of thirty days during any year.

(3) (a) Any resident of this state who has received a purple heart for service in the United States armed forces or who is a disabled veteran may obtain from the division of parks and wildlife, free of charge, a lifetime resident combination small game hunting and fishing license.

(b) For the purposes of this subsection (3), “disabled veteran” means an individual who is a resident as defined in section 33-1-102 (38), has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established to the division of parks and wildlife the presence of a service-connected disability which has been rated by the veterans administration at sixty percent or more through disability retirement benefits or a pension because of a public statute administered by the veterans administration or the department of the Army, Navy, or Air Force.

(4) The commission may adopt appropriate rules to establish a preference for active duty members of the United States armed forces who are stationed at any military facility located in Colorado or are Colorado residents upon their return from service outside of the United States for licenses left over after completion of the division’s annual limited license draw. The preference may allow for such a member of the United States armed forces to apply for preference points for any limited license draw that occurred during the member’s absence.

Source: L. 69: R&RE, p. 436, § 1. C.R.S. 1963: § 62-11-4. L. 71: p. 605, § 1. L. 72: p. 333, § 32. L. 75: (1) and (2) amended and (3) added, p. 1320, § 1, effective January 1, 1976. L. 83: (1) amended, p. 1290, § 3, effective January 1, 1984. L. 86: (1) amended, p. 502, § 124, effective July 1. L. 2006: (4) added, p. 1167, § 1, effective May 25; (1) amended, p. 1408, § 78, effective August 7. L. 2007: (4) amended, p. 586, § 2, effective April 19. L. 2008: (3)(a) amended, p. 640, § 1, effective August 5.

33-4-105. Licenses for residents sixty-four years of age or over. (Repealed)

Source: L. 69: R&RE, p. 437, § 1. C.R.S. 1963: § 62-11-5. L. 75: Entire section R&RE, p. 1321, § 2, effective January 1, 1976. L. 83: Entire section repealed, p. 1291, § 8, effective January 1, 1984.

33-4-105.5. Landowner preference for hunting license. (Repealed)

Source: L. 75: Entire section added, p. 1322, § 1, effective April 18. L. 79: Entire section amended, p. 1218, § 12, effective June 21. L. 83: Entire section R&RE, p. 1294, § 1, effective January 1, 1984. L. 84: Entire section repealed, p. 925, 19, effective January 1, 1985.

Editor’s note: This section was relocated to § 33-4-103 in 1984.

33-4-106. Miscellaneous licenses, permits, stamps, cards, passes, and certificates - fees. (Repealed)

Source: L. 69: R&RE, p. 437, § 1. C.R.S. 1963: § 62-11-6. L. 71: p. 604, § 5. L. 72: pp. 333, 334, §§ 33, 34. L. 73: pp. 647, 654, §§ 8, 33. L. 75: (1) and (2) R&RE, pp. 1318, 1324, §§ 2, 1. L. 77: (1)(m), (1)(aa), (2)(a)(I), (2)(a)(II), (2)(a)(IV), and (2)(b)(I) amended, (1)(t) repealed, and (1)(cc) to (1)(ff) added, pp. 1526, 1537, 1542, §§ 15, 44, 1, 2. L. 78: (2)(b)(II) amended, p. 273, § 95. L. 79: (1)(e) and (1)(n) to (1)(p) repealed, p. 1612, § 9(2), effective June 7; (1)(e) repealed, p. 1223, § 29, effective June 21; (2)(a)(III) to (2)(a)(VII) amended and (2)(a)(VIII) to (2)(a)(XI) added, p. 1226, § 5, effective January 1, 1980. L. 80: (2)(a)(I) amended, p. 686, § 1, effective January 1, 1981. L. 81: (2)(b)(I) amended, p. 1656, § 1, effective May 28. L. 82: (1)(gg) added, p. 518, § 2, effective March 11. L. 83: (1)(l) repealed, p. 1292, § 2, p. 1292, § 2, effective May 21; (2)(a)(I)(A) repealed, p. 2051, § 21, effective October 14; (1)(hh) added by revision, p. 1291, §§ 8, 9. L. 84: Entire section repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: This section was relocated to § 33-4-102 in 1984.

33-4-107. Permit to collect for scientific purposes. (Repealed)

Source: L. 69: R&RE, p. 438, § 1. C.R.S. 1963: § 62-11-7. L. 72: p. 334, § 35. L. 73: p. 647, § 9. L. 75: (3) amended, p. 1307, § 9, effective July 14. L. 77: (1) amended, p. 1527, § 16, effective January 1, 1978. L. 83: Entire section repealed, p. 1291, § 8, effective January 1, 1984.

33-4-108. Certificate of lawful possession. (Repealed)

Source: L. 69: R&RE, p. 439, § 1. C.R.S. 1963: § 62-11-8. L. 72: p. 334, § 36. L. 77: Entire section amended, p. 1527, § 17, effective January 1, 1978. L. 83: Entire section repealed, p. 1291, § 8, effective January 1, 1984.

33-4-109. Specimens may be held - when. (Repealed)

Source: L. 69: R&RE, p. 439, § 1. C.R.S. 1963: § 62-11-9. L. 73: p. 648, § 10. L. 83: Entire section repealed, p. 1291, § 8, effective January 1, 1984.

33-4-110. Duplicate tags. (Repealed)

Source: L. 69: R&RE, p. 439, § 1. C.R.S. 1963: § 62-11-10. L. 72: p. 335, § 37. L. 83: Entire section repealed, p. 1291, § 8, effective January 1, 1984.

33-4-111. Taxidermists must have license. (Repealed)

Source: L. 69: R&RE, p. 439, § 1. C.R.S. 1963: § 62-11-11. L. 77: Entire section amended, p. 1527, § 18, effective January 1, 1978. L. 79: Entire section repealed, p. 1612, § 9, effective June 7; entire section repealed, p. 1223, § 29, effective June 21.

33-4-112. License agents - reports - board of claims. (Repealed)

Source: L. 69: R&RE, p. 439, § 1. C.R.S. 1963: § 62-11-12. L. 72: pp. 335, 598, §§ 38, 85. L. 73: p. 648, § 11. L. 76: (9) added, p. 717, § 1, effective April 30. L. 77: (1) and (9)(b) amended and (10) added, p. 1544, § 1, effective May 24; (1) amended, p. 1527, § 19, effective January 1, 1978. L. 79: (1) amended, p. 1227, § 6, effective January 1, 1980. L. 84: Entire section repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: This section was relocated to §§ 33-4-101 and 33-12-104 in 1984.

33-4-113. Certificate of competency and safety - when necessary. (Repealed)

Source: L. 69: R&RE, p. 441, § 1. C.R.S. 1963: § 62-11-13. L. 72: p. 559, § 86. L. 84: Entire section repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: This section was relocated to § 33-6-107 (8) in 1984.

33-4-114. Course in hunter safety and competency. (Repealed)

Source: L. 69: R&RE, p. 441, § 1. C.R.S. 1963: § 62-11-14. L. 72: p. 336, § 39. L. 75: Entire section amended, p. 1307, § 10, effective July 14. L. 84: Entire section repealed, p. 925, § 19, effective January 1, 1985.

33-4-115. Division of wildlife to coordinate statewide programs. (Repealed)

Source: L. 69: R&RE, p. 441, § 1. C.R.S. 1963: § 62-11-15. L. 72: p. 336, § 40. L. 75: (2) repealed, p. 1313, § 35, effective July 14. L. 84: Entire section repealed, p. 925, § 19, effective January 1, 1985.

33-4-116. Big game hunting licenses - auction or raffle - use of proceeds - rules.
(1) (a) The division is authorized to issue up to two either-sex rocky mountain bighorn sheep licenses, two either-sex rocky mountain goat licenses, two either-sex shiras moose licenses, four either-sex mule or white-tailed deer licenses, four either-sex rocky mountain elk licenses, and four either-sex pronghorn licenses each year through a competitive auction or raffle.

(b) A nonprofit organization directly involved in the conservation of wildlife in Colorado or the division may be authorized by the commission to conduct the license auction or raffle. All such auctions and raffles shall be conducted pursuant to Colorado law.

(2) (a) Except as specified in this subsection (2), all proceeds from the auction or raffle of rocky mountain bighorn sheep, rocky mountain goat, and shiras moose licenses shall be used by the division for the benefit of rocky mountain bighorn or desert sheep, rocky mountain goats, and shiras moose in Colorado, and all proceeds from the auction or raffle of mule and white-tailed deer, rocky mountain elk, and pronghorn licenses shall be used by the division for the benefit of mule and white-tailed deer, rocky mountain elk, and pronghorn in Colorado.

(b) If an auction or raffle is conducted by a nonprofit organization, the organization may retain up to twenty-five percent of the proceeds of the auction or raffle to cover auction or raffle costs and to fund projects of its own choosing that benefit wildlife in Colorado.

(c) The proceeds from the auctions and raffles shall be in addition to any moneys otherwise provided for the management of rocky mountain bighorn or desert sheep, rocky mountain goats, shiras moose, mule and white-tailed deer, rocky mountain elk, and pronghorn.

(3) The commission may promulgate rules pertaining to auction and raffle licenses, the conduct of the auctions and raffles, record-keeping requirements, the expenditure of proceeds, including requiring consultation by the division with advisory committees comprised of representatives of the participating nonprofit organizations prior to the expenditure of any proceeds, and any other rules necessary to implement the auction and raffle program.

Source: L. 88: Entire section added, p. 1159, § 1, effective April 9. L. 93: (2) and (3) amended, p. 507, § 2, effective April 26. L. 95: Entire section amended, p. 454, § 1, effective May 16. L. 96: (2)(b) amended, p. 1221, § 16, effective August 7. L. 2006: Entire section amended, p. 911, § 1, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2)(b), see section 1 of chapter 237, Session Laws of Colorado 1996.

33-4-116.5. Auction or raffle of deer, elk, and pronghorn licenses - use of proceeds. (Repealed)

Source: **L. 2000:** Entire section added, p. 1579, § 1, effective June 1. **L. 2005:** (1)(a), (1)(b)(III), (2)(a)(III), and (2)(b) amended, p. 475, § 8, effective January 1, 2006. **L. 2006:** Entire section repealed, p. 912, § 2, effective August 7.

33-4-117. Youth licenses - terminally ill hunters - special restrictions and privileges. (1) A person under the age of eighteen years may obtain a youth small game hunting license, issued pursuant to section 33-4-102 (1.4) (x), for a fee of one dollar upon showing a hunter education certificate as required by section 33-6-107 (8). The one-dollar fee includes the search and rescue fund surcharge imposed under section 33-1-112.5 (2) (a).

(2) Every person under sixteen years of age hunting with a youth small game hunting license shall at all times be accompanied by a person eighteen years of age or older as required by section 33-6-107 (3.5); except that a person of any age who purchases a small game hunting license issued pursuant to section 33-4-102 (1.4) (f) is exempt from this restriction.

(3) (Deleted by amendment, L. 2003, p. 1031, § 7, effective July 1, 2003.)

(4) Youth big game licenses, entitling the holder to hunt deer, elk, or pronghorn, may be purchased by persons who are at least twelve years of age but under eighteen years of age for the fees specified in section 33-4-102 (1.4) (w). Said fees include the search and rescue fund surcharge imposed under section 33-1-112.5 (2) (a). Persons under sixteen years of age hunting deer, elk, or pronghorn must be accompanied by a person eighteen years of age or older as required by section 33-6-107 (4).

(4.5) The commission is authorized to establish a special licensing program for hunters eligible for a youth license under the provisions of this section, and to adopt rules that establish a hunting license preference for youth hunters. In connection with such a program the commission is also authorized, within its discretion, to establish a special licensing program for adult mentors of youth hunters and to adopt rules that establish a hunting license preference for such adult mentors.

(5) (Deleted by amendment, L. 2004, p. 83, § 1, effective August 4, 2004.)

(6) The commission is authorized to establish a special licensing program for hunters twenty-one years of age or younger who suffer from a terminal illness or a life-threatening disease or injury and to adopt rules that establish a hunting license preference for such hunters.

Source: **L. 94:** Entire section added, p. 1219, § 2, effective May 22. **L. 98:** (4.5) added, p. 859, § 1, effective May 26. **L. 99:** (3) and (5) amended, p. 1337, § 1, effective August 4. **L. 2003:** (1) to (3) amended, p. 1031, § 7, effective July 1. **L. 2004:** (5) amended, p. 83, § 1, effective August 4. **L. 2005:** (4) amended, p. 476, § 9, effective January 1, 2006. **L. 2006:** (1), (2), and (4) amended and (6) added, p. 651, § 1, effective January 1, 2007.

Cross references: For the legislative declaration contained in the 1994 act enacting this section, see section 1 of chapter 209, Session Laws of Colorado 1994.

33-4-118. Hiking certificates. (Repealed)

Source: **L. 94:** Entire section added, p. 1734, § 2, effective January 1, 1995. **L. 2001:** Entire section repealed, p. 601, § 2, effective July 1.

33-4-119. Mobility-impaired hunters. (1) The commission is authorized to establish a special licensing program for mobility-impaired hunters.

(2) The commission is authorized to adopt appropriate rules that define “mobility-impaired” and establish a hunting license preference for the mobility-impaired.

Source: **L. 98:** Entire section added, p. 859, § 2, effective May 26.

33-4-120. Wildlife management public education advisory council - creation.

(1) (a) The director of the division shall appoint nine individuals, at least three of which are from the western slope, to act as the wildlife management public education advisory council, referred to in this section as the council. The council shall have statewide responsibility and authority.

(b) (I) The council shall consist of the following members:

(A) Two sports persons who purchase big game licenses on a regular basis in Colorado, one of whom is from the western slope;

(B) Two sports persons who purchase fishing licenses on a regular basis in Colorado, one of whom is from the western slope;

(C) One person representing local counties in rural areas of Colorado, the economies of which have a substantial income from hunting or fishing recreation;

(D) One person representing municipalities in rural areas of Colorado, the economies of which have a substantial income from hunting or fishing recreation;

(E) One person representing the division of parks and wildlife;

(F) One person, who shall not be an employee of the division, with a substantial background in media and marketing operations; and

(G) One person representing agricultural producers.

(II) The council members appointed pursuant to sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b) shall be nominated by organized sports person groups with regional or statewide membership. The council members appointed pursuant to sub-subparagraphs (C) and (D) of subparagraph (I) of this paragraph (b) shall be nominated by organizations that represent the interests of such counties and municipalities.

(III) All members of the council shall be residents of the state of Colorado.

(IV) Every effort shall be made by the director to appoint members from all geographic areas of the state.

(c) A member shall serve for no more than two terms; except that no member representing the division of parks and wildlife shall be so limited. The appointments to the council shall be as follows:

(I) The initial terms for the two members representing sports persons who hunt shall be two years for one member of said group and four years for the other member of said group.

(II) The initial terms for the two members representing sports persons who fish shall be two years for one member of said group and four years for the other member of said group.

(III) The initial term length for the member representing the division shall be at the discretion of the director of the division.

(IV) The initial term length for the member representing counties and for the member representing agricultural producers shall be four years.

(V) The initial term length for the member representing municipalities and for the member with substantial experience in media and marketing operations shall be two years.

(VI) After the initial appointments, all subsequent appointments shall be for four years.

(d) Members of the council shall be compensated from the wildlife cash fund created in section 33-1-112 (1), for the reasonable and necessary expenses they incur in connection with their activities for the council.

(e) The council shall perform the following duties:

(I) Oversee the design of a comprehensive media-based public information program to educate the general public about the benefits of wildlife, wildlife management, and wildlife-related recreational opportunities in Colorado, specifically hunting and fishing;

(II) Prepare an operational plan for the director's approval no later than December 1, 1998;

(III) Expend moneys from the wildlife management public education fund in accordance with the operational plan approved by the director; except that all such expenditures shall be within the scope of the activities and funding levels authorized in such operational plan.

(f) Repealed.

- (2) Nothing in this section shall be construed to be a mechanism to substitute funding that would otherwise be available for expenditure by the division, or to replace or reduce the obligation of the division to carry out public information programs under this title.
- (3) Repealed.

Source: **L. 98:** Entire section added, p. 855, § 2, effective July 1. **L. 99:** (1)(e)(III) amended and (1)(f) added, p. 1397, § 4, effective June 4. **L. 2004:** (3)(a) repealed, p. 1525, § 1, effective August 4. **L. 2005:** (3)(b) repealed, p. 781, § 69, effective June 1.

Editor’s note: Subsection (1)(f) provided for the repeal of subsection (1)(f), effective July 1, 2009. (See L. 99, p. 1397.)

ARTICLE 5

Protection of Fishing Streams

33-5-101.	Legislative declaration.	33-5-104.	Notice by commission.
33-5-102.	Projects affecting streams -	33-5-105.	Arbitration.
	submission of plans.	33-5-106.	Vested water rights.
33-5-103.	Examination of plans.	33-5-107.	Irrigation projects exempt.

33-5-101. Legislative declaration. It is declared to be the policy of this state that its fish and wildlife resources, and particularly the fishing waters within the state, are to be protected and preserved from the actions of any state agency to the end that they be available for all time and without change in their natural existing state, except as may be necessary and appropriate after due consideration of all factors involved.

Source: **L. 69:** p. 457, § 1. **C.R.S. 1963:** § 62-14-1.

ANNOTATION

Law reviews. For article, “The Emerging tions and Colorado Water Law”, see 53 U. Colo. Relationship Between Environmental Regula- L. Rev. 597 (1982).

33-5-102. Projects affecting streams - submission of plans. No agency of the state, referred to in this article as an “applicant”, shall obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type of construction without first notifying the commission of such planned construction. Such notice shall be on forms furnished by the commission and shall be submitted not less than ninety days prior to the date of the commencement of planned construction. The notice shall include detailed plans and specifications of so much of the project as may or will affect, as set forth in this section, any stream.

Source: **L. 69:** p. 457, § 2. **C.R.S. 1963:** § 62-14-2. **L. 72:** p. 342, § 58.

33-5-103. Examination of plans. The commission shall promptly examine and investigate all plans submitted to it pursuant to the provisions of section 33-5-102. If the commission determines that the plans and specifications are technically inadequate to accomplish the purposes set forth in section 33-5-101, it shall notify the applicant and may render aid in preparing adequate plans and specifications.

Source: **L. 69:** p. 457, § 3. **C.R.S. 1963:** § 62-14-3. **L. 72:** p. 342, § 59.

33-5-104. Notice by commission. Within thirty days after the receipt of any plans submitted to it, the commission shall notify the applicant if the planned construction or project will adversely affect the stream involved. If an applicant is notified that the planned

construction will adversely affect any stream involved, the commission shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

Source: L. 69: p. 457, § 4. C.R.S. 1963: § 62-14-4.

33-5-105. Arbitration. (1) If the commission notifies an applicant that the construction will adversely affect the stream involved, the applicant, within fifteen days after receiving the recommendations and alternatives of the commission, shall notify the commission if it refuses to modify its plans in accordance with such recommendations or alternatives.

(2) Upon receipt of such refusal, the commission shall determine if it desires to have the matter arbitrated. Within ten days after an affirmative decision and after notice to the other agency or agencies involved, the commission shall notify, in writing, the governor. No further action shall be taken to advance the planned construction until the governor issues a written decision within thirty days after receipt of written notice which shall be binding on all parties concerned, and there shall be no judicial review thereof.

Source: L. 69: p. 458, § 5. C.R.S. 1963: § 62-14-5. L. 72: p. 342, § 60.

33-5-106. Vested water rights. This article shall not operate or be so construed as to impair, diminish, or divest any existing or vested water rights acquired under the laws of this state or the United States, nor shall this article apply in emergency situations.

Source: L. 69: p. 458, § 6. C.R.S. 1963: § 62-14-6.

33-5-107. Irrigation projects exempt. This article shall not apply to any irrigation project.

Source: L. 69: p. 458, § 7. C.R.S. 1963: § 62-14-7.

ARTICLE 5.5

Fish Health Board

33-5.5-101. Fish health board - created.

33-5.5-102. Duties of the fish health board.

33-5.5-101. Fish health board - created. (1) There is hereby created and established in the division a fish health board, which shall consist of five members, each of whom shall be appointed no later than sixty days after June 7, 1991. The members of the board shall be as follows:

(a) One member who is not a commercial aquaculturist and who may be an employee of the department of agriculture, appointed by the commissioner of agriculture;

(b) One member who may be an employee of the division, appointed by the director;

(c) Two members who are engaged in the private business of aquaculture and who shall, insofar as is possible, represent the various segments of the aquaculture industry and the various geographic areas of the state, appointed by the commissioner of agriculture; and

(d) One member who is an employee of the United States fish and wildlife service, appointed by the regional director thereof.

(2) The term of office of said members shall be three years; but of the members first appointed to the board, two members shall be appointed for one-year terms, two members shall be appointed for two-year terms, and the remaining member shall be appointed for a three-year term. The assignment of such initial terms shall be made by the director. Each member shall serve until his or her successor has been appointed and qualified, and any

member shall be eligible for reappointment. The appointing entity shall fill any vacancy by appointment for the remainder of an unexpired term. The commissioner of agriculture and the director of the division shall be ex officio nonvoting members of the board. Board members shall serve without compensation except for actual and necessary traveling expenses. The board shall meet at least once each year and additionally as necessary.

(3) The fish health board shall annually elect a chairman and a vice-chairman, each of whom shall serve at the pleasure of the board.

(4) A majority of the fish health board shall constitute a quorum, and, if a quorum is present, in person or by telephone, the board may act upon a vote of a majority of those present.

(5) The fish health board shall constitute a “public entity” and each member and employee of the board shall constitute a “public employee” within the meaning of the “Colorado Governmental Immunity Act”, article 10 of title 24, C.R.S.

(6) The fish health board shall exercise its powers and perform its duties and functions specified in this article under the department and the executive director thereof as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

Source: L. 91: Entire article added, p. 197, § 3, effective June 7.

33-5.5-102. Duties of the fish health board. (1) The fish health board shall review or initiate and consider, prior to presentation to the commission for adoption, every rule which is to regulate or control, or otherwise relates to, fish health, the spread of aquatic disease within private aquaculture facilities or cultured aquatic stock, or the importation into the state or the distribution of any exotic aquatic species.

(2) After considering any proposed rule, the fish health board shall vote to approve or disapprove the rule.

(3) The proposed rules approved by the fish health board shall be sent to the commission with the recommendation to adopt. The commission shall, through its normal regulatory review procedure, timely review the rule and act either to adopt or to decline to adopt the rule. In the event the commission declines to adopt the rule, it shall convey its decision to the board, along with an explanation of the reason for its decision.

(4) The proposed rules disapproved by the fish health board shall not be forwarded to the commission unless the director determines that a situation or condition exists which threatens to have a serious impact on existing aquatic populations and that the proposed regulation should be considered by the commission in spite of the recommendation of the fish health board. The director shall then forward the rule to the commission along with a recommendation of disapproval from the fish health board.

(5) Nothing in this section shall be construed to diminish or supersede the authority of the division or the commission to regulate or manage wild populations of aquatic organisms in the waters of the state or in facilities controlled or managed by the division or by the United States fish and wildlife service.

(6) The fish health board shall review any orders for the destruction of aquatic organisms or quarantines of aquaculture facilities which last beyond thirty days, and all such orders shall be conditioned upon the board’s approval; except that destruction orders may be approved by the director of the division upon a determination that a situation exists which threatens imminent danger to existing aquatic populations or to human health and safety, and that no more reasonable means exist to control the condition.

(7) Destruction of aquatic organisms or quarantines shall be done in accordance with applicable regulations of the division.

(8) The board shall periodically review division rules relating to destruction or quarantine of aquaculture stock or facilities and recommend appropriate changes to the commission.

Source: L. 91: Entire article added, p. 198, § 3, effective June 7. **L. 2012:** (8) amended, (HB 12-1317), ch. 248, p. 1209, § 21, effective June 4.

ARTICLE 6

Law Enforcement and Penalties - Wildlife

Editor's note: (1) Provisions concerning parks and outdoor recreation are now contained in article 15 of this title, effective January 1, 1985.

(2) This article was numbered as article 12 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1984 with an effective date of January 1, 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

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PART 1

GENERAL PROVISIONS

33-6-101. Powers and duties of officers. (1) Every Colorado wildlife officer or other commissioned officer of the division shall enforce the provisions of articles 1 to 6 of this title. Every other peace officer, as defined in section 33-1-102 (32), may assist the Colorado wildlife officers in the enforcement of articles 1 to 6 of this title. Each such officer has the full power and authority to arrest any person who he or she has probable cause to believe is guilty of a violation of articles 1 to 6 of this title, and, in accordance with the constitutions and laws of the United States and the state of Colorado, to open, enter, and search all places of concealment where he or she has probable cause to believe wildlife held in violation of articles 1 to 6 of this title is to be found or where other material evidence relating to a violation of articles 1 to 6 of this title is to be found and to seize the same. Each such officer shall have the authority to secure and execute search or arrest warrants.

(2) Any peace officer, as defined in section 33-1-102 (32), empowered with enforcing the provisions of articles 1 to 6 of this title has the authority to go onto any lands or waters, public or private, to demand of any person, who he has reason to believe has exercised the benefits conferred by any license provided for in articles 1 to 6 of this title, the immediate production of such license and any wildlife in possession; and such peace officer shall have the right and opportunity to inspect such licenses and wildlife.

(3) When protection of the public health, safety, or welfare requires, any officer having the power to enforce the provisions of articles 1 to 6 of this title shall have the authority to make use of any motor vehicle or other means of transportation, whether privately or publicly owned, to aid him in the performance of his duties. Payment of reasonable compensation shall be made for the use of such motor vehicle or other means of transportation.

(4) Repealed.

Source: **L. 84:** Entire article R&RE, p. 865, § 1, effective January 1, 1985. **L. 96:** (4) added, p. 1351, § 4, effective June 1. **L. 2002:** (4) amended, p. 841, § 4, effective May 30. **L. 2003:** (1) and (4) amended, p. 1630, § 68, effective August 6; (4) repealed, p. 1954, § 49, effective August 6.

Editor's note: This section is similar to former § 33-6-101 as it existed prior to 1984.

33-6-102. Items constituting public nuisance - when - seizure. (1) Every motor vehicle, vessel, firearm, seine, net, trap, explosive, poisonous or stupefying substance, or other personal property used in the hunting, taking, or harassing of wildlife in violation of the provisions of articles 1 to 6 of this title is declared to be a public nuisance. Every such item shall be subject to seizure, confiscation, and forfeiture or destruction as provided in this section, unless the possession of said property is not unlawful and the owner of said property was not a party to the violation and would suffer undue hardship by the sale, confiscation, or destruction of the property.

(2) (a) Any personal property subject to seizure, confiscation, and forfeiture or destruction under the provisions of this section, which is seized as a part of or incident to a criminal proceeding for violation of the provisions of articles 1 to 6 of this title and for which disposition is not provided by another statute of this state, shall be disposed of as provided in this section.

(b) (I) The division shall be in violation of this section if it seizes any personal property that is not part of or incident to a criminal proceeding for violation of articles 1 to 6 of this title and does not return such property on demand.

(II) If the division violates subparagraph (I) of this paragraph (b) or any other provision of law when seizing personal property, the division shall be charged one hundred dollars per day per violation plus any attorney's fees incurred by the owner of the property.

(3) Any such property, the possession of which is illegal and which in the opinion of the court having jurisdiction over the criminal proceeding is not properly the subject of a sale, may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the division. The court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(4) Except as otherwise provided in this section, the court may order any such property sold by the division in the manner provided for sales on execution. The proceeds of the sale shall be applied as follows:

- (a) To the fees and costs of removal and sale;
- (b) To the payment of the state's costs on such action; and
- (c) The balance, if any, or any portion thereof not otherwise distributed pursuant to this paragraph (c), to the wildlife cash fund. Instead of being deposited in the wildlife cash fund, such balance or any portion thereof may be transmitted, upon order of the court, as follows:

- (I) To the seizing agency, if the court finds that the proceeds can be used by such agency;

- (II) To any person who suffers bodily injury or property damage as a result of the action which constitutes the violation, if said person petitions the court therefor.

(5) In lieu of ordering the sale or destruction of such property, the court may, if it finds that it can be used by the agency which seized it, order it delivered to the agency for such use.

(6) The division shall not undertake any seizure of property pursuant to this section unless the division has complied with parts 3 and 5 of article 13 of title 16, C.R.S., as applicable.

Source: L. 84: Entire article R&RE, p. 865, § 1, effective January 1, 1985. L. 94: (1) amended, p. 1580, § 7, effective May 31. L. 96: (2) amended and (6) added, p. 375, §§ 3, 2, effective April 17.

Editor's note: This section is similar to former § 33-6-137 as it existed prior to 1984.

Cross references: For abatement of public nuisances, see part 3 of article 13 of title 16.

33-6-103. Prosecution of offenses. If the possession, use, importation, exportation, transportation, storage, sale, or offering or exposing for sale of wildlife is prohibited or restricted by articles 1 to 6 of this title or by rule or regulation of the commission, the prohibition or restriction, where not otherwise specifically provided, shall extend to and include every part of such wildlife, and a violation as to each animal or part thereof shall be a separate offense. Two or more offenses may be charged in the same complaint, information, or indictment, and proof as to part of an animal shall be sufficient to sustain a charge as to the whole of it. Violations as to any number of animals of the same kind may be charged in the same count and punished as a separate offense as to each animal.

Source: L. 84: Entire article R&RE, p. 866, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-130 as it existed prior to 1984.

33-6-104. Imposition of penalty - procedures. (1) Any person who violates any of the provisions of articles 1 to 6 of this title or any rule of the commission that does not have a specific penalty listed is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars, a surcharge as described in section 24-33.5-415.6, C.R.S., and an assessment of five license suspension points.

(2) At the time that any person is charged with violating any misdemeanor provisions of articles 1 to 6 of this title or any rule of the commission, the officer shall issue a summons

and complaint to the alleged offender or, in the case of a violation for which a fine of a fixed amount is prescribed, may give the alleged offender an opportunity to voluntarily pay the fine and surcharge in the form of a penalty assessment. Penalty assessments shall not be issued for violations for which minimum and maximum fines have been established. The penalty assessment notice given to the alleged offender shall contain the information required in and be in the form of a summons and complaint and shall specify in dollars the amount of the penalty to be assessed for the alleged offense and the amount of the surcharges to be collected pursuant to sections 24-4.2-104 (1) and 24-33.5-415.6, C.R.S. If the alleged offender accepts such notice and pays the fine and the surcharges entered thereon to the division within fifteen days of issuance of the notice, such acceptance and payment shall constitute an acknowledgment of guilt by such person of the violation set forth in the penalty assessment notice. Any person who accepts a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard a written promise to pay the specified fine and surcharges may be taken by the officer to the nearest known post-office facility and be required to remit the amount of the specified fine and surcharges to the division immediately by mail in United States currency or other legal tender by money order or personal check. Refusal or inability to remit the specified fine and surcharges by mail when required shall constitute a refusal to accept a penalty assessment notice. The officer shall advise the person arrested of the license suspension points to be assessed in accordance with section 33-6-106. Checks tendered by the violator to and accepted by the division and on which payment is received by the division shall be deemed sufficient receipt. If the fine and surcharges are not so paid, then the officer who issued the penalty assessment notice shall docket the summons and complaint with a court of competent jurisdiction for appearance by the person to answer the charges therein contained at such time and place as is specified in the summons and complaint.

Source: **L. 84:** Entire article R&RE, p. 866, § 1, effective January 1, 1985. **L. 85:** (2) amended, p. 796, § 4, effective May 3. **L. 2009:** Entire section amended, (SB 09-241), ch. 295, p. 1580, § 9, effective July 1.

Editor's note: This section is similar to former § 33-6-127 as it existed prior to 1984.

ANNOTATION

Applied in *People v. Boyd*, 642 P.2d 1 (Colo. 1982).

33-6-105. Disposition of fines and surcharges. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), all moneys collected for fines under articles 1 to 6 of this title, either by payment of a penalty assessment or assessed by a court upon conviction and resulting from issuance of a citation by a wildlife officer of the division of parks and wildlife, shall be transmitted to the state treasurer, who shall credit one-half to the general fund and one-half to the wildlife cash fund or, for offenses involving nongame wildlife, to the nongame and endangered wildlife cash fund.

(b) When an arrest has been made or the citation for any wildlife offense has been issued by a park officer of the division of parks and wildlife or by any other Colorado peace officer, as defined in this title, the state treasurer shall credit one-half of the moneys collected to the general fund and one-half to the Colorado town, city, county, city and county, or state agency whose officer issued the citation.

(2) It is the duty of every clerk of a court before which prosecutions and appeals of violators of articles 1 to 6 of this title are heard, within twenty days after any such trial, appeal, disposition, or dismissal thereof, to notify the division, in writing, of the result thereof and the amount of fines collected, if any, and the disposition of such fines.

(3) The provisions of the "Colorado Crime Victim Compensation Act", article 4.1 of title 24, C.R.S., shall not apply to articles 1 to 6 of this title, and the costs imposed by said act shall not be levied on criminal actions for violations of articles 1 to 6 of this title.

(4) No fine, penalty, or judgment assessed or rendered under the provisions of articles 1 to 6 of this title shall be suspended, reduced, or remitted otherwise than as expressly provided by law.

(5) All moneys collected by the division as surcharges on penalty assessments issued pursuant to section 33-6-104 shall be transmitted to the court administrator of the judicial district in which the offense was committed for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

Source: **L. 84:** Entire article R&RE, p. 867, § 1, effective January 1, 1985. **L. 85:** (5) added, p. 797, § 5, effective May 3. **L. 90:** (1) amended, p. 1739, § 5, effective April 3. **L. 94:** (1) and (2) amended, p. 1581, § 8, effective May 31. **L. 2011:** (1) amended, (SB 11-208), ch. 293, p. 1390, § 16, effective July 1.

Editor's note: This section is similar to former §§ 33-6-132 and 33-6-133 as they existed prior to 1984.

Cross references: For the wildlife cash fund, see § 33-1-112; for the parks and outdoor recreation cash fund, see § 33-10-111.

33-6-106. Suspension of license privileges - repeal. (1) The commission, or a hearing officer who has been delegated authority by the commission, has the exclusive authority to suspend the privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the division for a period not to exceed five years, except as otherwise provided in articles 1 to 6 of this title, if a person:

(a) Has been convicted of violations of articles 1 to 6 of this title totaling twenty or more points in any consecutive five-year period;

(b) While a Colorado resident:

(I) Has been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact", part 26 of article 60 of title 24, C.R.S., for which equivalent charges exist in this state, and such convictions, individually or when combined with convictions specified in paragraph (a) of this subsection (1), would total twenty or more points in any consecutive five-year period.

(II) (Deleted by amendment, L. 2003, p. 1940, § 4, effective May 22, 2003.)

(c) Has been convicted of any violation of title 18, C.R.S., that was committed while hunting, trapping, fishing, or engaging in a related activity or of any federal wildlife violations within Colorado and such federal convictions, individually or when combined with convictions specified in paragraph (a) of this subsection (1), total twenty or more points;

(d) Is found to meet the requirements for reciprocal suspension as provided in the "Wildlife Violator Compact", part 26 of article 60 of title 24, C.R.S.;

(e) Has been convicted of any violation under section 33-6-114.5 (2), (3), (4), (5), or (6).

(2) For the purposes of license suspension under subsection (1) of this section, the payment of a penalty assessment, a court conviction, a plea of nolo contendere, the acceptance of a deferred or suspended sentence by the court, the adjudication of a juvenile as delinquent for any violation of this title that would have resulted in a conviction if prosecuted as an adult, or forfeiture of bail shall be deemed a conviction.

(3) Any person who is to be considered for suspension, including permanent suspension, shall be given due notice of such action and shall be given the opportunity to appear and show cause why his or her license privileges should not be suspended. Such notice shall be in the form of a certified letter, return receipt requested, sent to the last-known address of the person, stating the violations and the date of hearing. Proof of such mailing and attempted delivery shall be sufficient proof of the notice required by this subsection (3).

(4) Except as otherwise provided in subsection (4.5) of this section, any hearing on the suspension of license privileges for Colorado residents shall be held in a regional or area office of the division nearest to the residence of the respondent or, in the case of

nonresidents, in such other location as may be determined by the division. Such hearing shall be conducted by a hearing examiner on behalf of the commission. The hearing examiner may administer oaths and affirmations, issue subpoenas for the attendance of witnesses and the production of books and papers, and apply to the district court for enforcement thereof. The hearing examiner shall not be subject to the provisions of part 10 of article 30 of title 24, C.R.S. The director shall appoint such hearing examiners, who may be employees of the division.

(4.5) With respect to any suspension of the license of a resident pursuant to the provisions of a compact with another state, territory, or province for failure to comply with the terms of a summons, complaint, summons and complaint, penalty assessment notice, or other official notice of an alleged wildlife violation issued by a wildlife officer or other authorized peace officer in such other state, territory, or province, the hearing shall be conducted by the commission at the time and place of a regularly scheduled meeting without the need for any prior hearing by the hearing examiner. The commission shall have the authority with respect to any such suspension to suspend the resident's privileges until satisfactory evidence of compliance with the terms of the summons, complaint, summons and complaint, penalty assessment notice, or other official notice of violation has been furnished to the division.

(5) Notice of any resulting suspension shall be sent to the person by certified mail, return receipt requested, to the last-known address of such person and to license agents and other persons who should be notified of such suspensions.

(6) Any person whose license privileges have been suspended shall not be entitled to purchase, apply for, or exercise the benefits conferred by any license issued by the division until such person's suspension has expired. Any person who violates this subsection (6) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of five hundred dollars. Conviction under this subsection (6) shall result in an automatic two-year extension of the existing suspension added to the end of the original suspension unless such person was under a lifetime suspension when such violation occurred. If a person is under a lifetime suspension and violates this subsection (6), such person shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(7) The commission may delegate the exercise of its exclusive authority to suspend wildlife license privileges to any hearing examiner appointed by the division. The hearing examiner's decision may be appealed to the commission by filing a notice of appeal with the commission within thirty days after receipt of the hearing examiner's decision.

(8) If a person's privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the division is suspended three or more times pursuant to this section, such person shall receive a lifetime suspension of such privileges.

(9) (a) A person may petition the commission to end a suspension once every five years either:

(I) After half of a suspension of at least ten years but less than a lifetime has elapsed; or

(II) After fifteen years of a lifetime suspension has elapsed.

(b) If a person petitions the commission to end a suspension, the commission shall hold a hearing to determine whether to end the suspension within one hundred twenty days after receiving the petition; except that a person may petition the commission no more than three times. Upon receiving a fourth or subsequent petition, the commission may deny the petition without a hearing.

(c) (I) The commission may end a suspension if:

(A) The person is unlikely to violate this article again;

(B) The person has not been convicted of or pled guilty or nolo contendere to any violation of articles 1 to 6 of this title after the suspension was imposed; and

(C) The suspension is the person's first in Colorado.

(II) In determining whether to end a suspension under this subsection (9), the commission may consider whether the person has been convicted of or pled guilty or nolo contendere to any misdemeanor or felony.

- (d) If a suspension is ended, the commission may require the petitioner to:
 - (I) Pay a reinstatement fee, not to exceed three hundred dollars;
 - (II) Perform service, not to exceed forty hours, under the division's direction on wildlife or state park projects; or
 - (III) Attend a hunter's safety or hunter outreach course.
- (e) The commission shall hold a hearing required by this subsection (9) at one of its regularly scheduled meetings but not more than quarterly.
- (f) This subsection (9) is repealed, effective July 1, 2017. Prior to the repeal, the commission shall review the petition program under this subsection (9) to determine whether the number of petitions granted justifies the continuance of the program. Based upon this review, the commission shall make recommendations to the general assembly whether to continue this subsection (9) by October 1, 2016.

Source: **L. 84:** Entire article R&RE, p. 868, § 1, effective January 1, 1985. **L. 89:** (1)(d) and (4.5) added and (4) amended, p. 1092, §§ 2, 3, effective April 12. **L. 90:** (1)(e) added, p. 1531, § 3, effective July 1. **L. 94:** IP(1), (1)(b), (1)(d), (3), (4), and (5) amended and (7) added, pp. 1581, 1582, §§ 9, 10, effective May 31. **L. 2003:** IP(1), (1)(b)(II), (1)(c), (2), and (6) amended and (8) added, p. 1940, § 4, effective May 22. **L. 2012:** (9) added, (HB 12-1330), ch. 259, p. 1336, § 1, effective August 8.

Editor's note: (1) This section is similar to former § 33-6-128 as it existed prior to 1984.
 (2) Section 3 of chapter 259, Session Laws of Colorado 2012, provides that the act adding subsection (9) applies to suspensions existing on or after August 8, 2012.

ANNOTATION

The term "related activity" in subsection (1)(c) is not unconstitutionally vague. A person of ordinary intelligence would know that if his or her criminal conviction has a close and logical connection to the person's hunting, trapping, or fishing activity, such conduct falls within the ambit of potential license suspension under this section. *Woodrow v. Wildlife Comm'n*, 206 P.3d 835 (Colo. App. 2009).

The double jeopardy clause of the fifth amendment of the United States constitution is not violated when a license suspension under this section is based on the same facts as the criminal charges. License suspension un-

der this section is a civil, not criminal, sanction. Furthermore, the primary goal of the general assembly in providing such civil sanction was not the imposition of punishment on the licensee, but the remedial purpose of protecting the public's interest in the state's wildlife. *Woodrow v. Wildlife Comm'n*, 206 P.3d 835 (Colo. App. 2009).

A two-year extension of an existing suspension under subsection (6) does not count as a separate suspension for purposes of a lifetime suspension under subsection (8). *Quercioli v. Colo. Dept. of Natural Res.*, 201 P.3d 1270 (Colo. App. 2008).

33-6-107. Licensing violations - penalties. (1) (a) Except as otherwise provided in articles 1 to 6 of this title or by rule of the commission, a person shall not procure or use more than one license of a certain type in a calendar year. A person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall, with respect to wildlife other than big game, be punished by a fine of fifty dollars and an assessment of ten license suspension points or shall, with respect to big game, be punished by a fine of two hundred dollars and an assessment of fifteen license suspension points.

(b) A license procured in violation of this subsection (1) is void.

(2) (a) Any person who makes a false statement or provides false information in connection with applying for or purchasing a license, or any license agent who knowingly uses or accepts false information in connection with selling or issuing a license, is guilty of a misdemeanor and, upon conviction, shall be punished by the following fines:

(I) For each license that is not a big game license, a fine that is equal to twice the cost of the most expensive license for such species and ten license suspension points shall be assessed.

(II) For each big game license, a fine that is equal to twice the cost of the most

expensive license for such species and an assessment of fifteen license suspension points shall be assessed.

(b) All licenses obtained with false information are void.

(3) Except as otherwise provided in articles 1 to 6 of this title or by rule of the commission, any person, regardless of age, who hunts or takes wildlife in this state shall procure a proper and valid license therefor and shall have the valid license on his or her person when exercising the benefits it confers. A person who violates this subsection (3) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine and an assessment of license suspension points as follows:

(a) For each license that is not a big game license, the fine shall be equal to twice the cost of the most expensive license for such species and ten license suspension points shall be assessed.

(b) For each big game license, fifteen license suspension points and a fine that is equal to twice the cost of the most expensive license for such species shall be assessed.

(3.5) Except as provided in subsection (9) of this section, it is unlawful for any person under sixteen years of age to hunt wildlife with a youth license issued pursuant to section 33-4-102 (1.4) (x) unless such person is at all times personally accompanied by, and in voice and reasonable visual contact with, a person eighteen years of age or older who holds a valid hunter education certificate or who was born before January 1, 1949. Any person who violates this subsection (3.5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of five license suspension points.

(4) It is unlawful for any person under twelve years of age to hunt or take big game, and it is unlawful for persons between the ages of twelve and fifteen years of age to hunt or take big game except when at all times personally accompanied by, and in voice and reasonable visual contact with, a person eighteen years of age or older who holds a valid hunter education certificate or who was born before January 1, 1949. Any person who violates this subsection (4) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of ten license suspension points.

(5) Any person who possesses live wildlife in this state and who is required by commission rule or regulation to have a license for such possession shall have the required license at the site where the wildlife is kept. Any person who violates this subsection (5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of ten license suspension points.

(6) A person sixteen years of age or over who fishes for or takes fish, amphibians, mollusks, or crustaceans in this state shall have a proper and valid fishing license on his or her person. Persons under sixteen years of age are not required to have a fishing license and shall be entitled to the full bag or possession limit set by the commission. A person who violates this subsection (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of ten license suspension points.

(7) It is unlawful to alter, transfer, sell, loan, or assign a lawfully acquired license to another person, or to use another person's lawfully acquired license. A person who violates this subsection (7) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of fifteen license suspension points, and licenses so used are void.

(8) It is unlawful for any person born on or after January 1, 1949, to purchase or obtain any hunting license, hunt, or trap unless the person produces a hunter education certificate issued by the division, attesting to the person's successful completion of a division certified hunter education course taught by a division certified instructor which totals not less than ten hours of instruction. Any person required to obtain such a certificate shall have the certificate on his or her person while hunting, trapping, or taking wildlife. For the purposes of this subsection (8), the division shall recognize, in addition to Colorado hunter education certificates issued on or after January 1, 1985, those Colorado hunter education certificates issued prior to January 1, 1985, and any valid temporary hunter education certificate issued by the division, and the division may recognize the hunter education programs of other states or countries as being sufficient for the purposes of purchasing a hunting license in Colorado. Any person who violates this subsection (8) is guilty of a misdemeanor and, upon

conviction thereof, shall be punished by a fine of fifty dollars and an assessment of ten license suspension points.

(9) For the purposes of this section, any person, any member of such person's family, or any employee of the person may hunt, trap, or take black-billed magpies, common crows, starlings, English or house sparrows, common pigeons, coyotes, bobcats, red foxes, raccoons, jackrabbits, badgers, marmots, prairie dogs, pocket gophers, Richardson's ground squirrels, rock squirrels, thirteen-lined ground squirrels, porcupines, crayfish, tiger salamanders, muskrats, beavers, exotic wildlife, and common snapping turtles on lands owned or leased by the person without securing licenses to do so, but only when such wildlife is causing damage to crops, real or personal property, or livestock. Any person may kill skunks or rattlesnakes when necessary to protect life or property. The pelts or hides of any mammals taken under this subsection (9) may be transferred, possessed, traded, bartered, or sold by a person who holds an appropriate small game license.

Source: **L. 84:** Entire article R&RE, p. 868, § 1, effective January 1, 1985. **L. 89:** (8) and (9) amended, p. 1346, § 6, effective April 27. **L. 94:** (3.5) added and (4) and (6) amended, p. 1221, § 4, effective May 22; (3), (4), (7), (8), and (9) amended, p. 1582, § 11, effective May 31. **L. 95:** (4) amended, p. 1111, § 67, effective May 31. **L. 2003:** (2) and (3) amended, p. 1941, § 5, effective May 22; (1), (6), (7), and (9) amended, pp. 1028, 1032, §§ 2, 9, effective July 1.

Editor's note: (1) Subsection (8) is similar to former § 33-4-113 as it existed prior to 1984.

(2) Amendments to subsection (4) by Senate Bill 94-066 and Senate Bill 94-137 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act enacting subsection (3.5) and amending subsections (4) and (6), see section 1 of chapter 209, Session Laws of Colorado 1994.

33-6-108. Possession as prima facie evidence. The possession of wildlife shall be prima facie evidence that the person having such possession is engaged or has been engaged in hunting, fishing, or trapping.

Source: **L. 84:** Entire article R&RE, p. 870, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-136 as it existed prior to 1984.

33-6-109. Wildlife - illegal possession. (1) It is unlawful for any person to hunt, take, or have in such person's possession any wildlife that is the property of this state as provided in section 33-1-101, except as permitted by articles 1 to 6 of this title or by rule or regulation of the commission.

(2) It is unlawful for any person to have in his possession in Colorado any wildlife, as defined by the state or country of origin, that was acquired, taken, or transported from such state or country in violation of the laws or regulations thereof.

(2.5) This section does not apply to the illegal possession of live native or nonnative fish or viable gametes (eggs or sperm) which is governed by section 33-6-114.5.

(3) A person who violates subsection (1) or (2) of this section is guilty of a misdemeanor and, depending upon the wildlife involved, shall be punished upon conviction by a fine or imprisonment, or both, and license suspension points or suspension or revocation of license privileges as follows:

(a) For each animal listed as endangered or threatened, a fine of not less than two thousand dollars and not more than one hundred thousand dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and such imprisonment, and an assessment of twenty points. Upon conviction, the commission may suspend any or all license privileges of the person for a period of from one year to life.

(b) For each bald eagle, golden eagle, rocky mountain goat, desert bighorn sheep, American peregrine falcon, or rocky mountain bighorn sheep, a fine of not less than one

thousand dollars and not more than one hundred thousand dollars, or by imprisonment for not more than one year in the county jail, or both such fine and such imprisonment, and an assessment of twenty points. Upon conviction, the commission may suspend any or all license privileges of the person for a period of one year to life. A person who possesses all or a part of a bald eagle or golden eagle shall not be in violation of this section if the possession is authorized by 50 CFR 22.

(c) For each elk, bear, moose, or mountain lion, a fine of one thousand dollars and an assessment of fifteen points.

(d) For each pronghorn, deer, or big game species as defined in the state or country of origin and not listed in paragraph (a), (b), or (c) of this subsection (3), a fine of seven hundred dollars and an assessment of fifteen points.

(e) For each violation of paragraph (c) or (d) of this subsection (3) where any combination of three or more animals are taken or possessed, a minimum fine per animal as set forth in such paragraphs, to a maximum of ten thousand dollars per animal, or imprisonment for not more than one year in the county jail, or by both such fine and such imprisonment. Upon conviction, the commission may suspend any or all license privileges of the person for a period of from one year to life.

(f) For each raptor not covered by paragraph (a) or (b) of this subsection (3) and for each wild turkey, a fine of two hundred dollars and an assessment of ten points.

(g) For all fish, mollusks, crustaceans, amphibians, or reptiles not covered by paragraph (a) of this subsection (3), a fine of thirty-five dollars and an assessment of five points for the first such animal and, for each additional such animal taken or possessed at the same time, an additional fine of ten dollars per animal and an additional assessment of one point per animal.

(h) For any wildlife not covered by paragraphs (a) to (g) of this subsection (3), a fine of fifty dollars and an assessment of five points for the first such animal and, for each additional such animal taken or possessed at the same time, an additional fine of twenty-five dollars per animal and an additional assessment of five points per animal.

(3.4) (a) In addition to the criminal penalties listed in subsection (3) of this section, there shall be assessed a further penalty in the following amount for each of the following big game animals illegally taken:

(I) For each bull elk with at least six points on one antler beam, ten thousand dollars;

(II) For each mule deer buck with an inside antler spread of at least twenty-two inches, ten thousand dollars;

(III) For each whitetail deer buck with an inside antler spread of at least eighteen inches, ten thousand dollars;

(IV) For each bull moose, ten thousand dollars;

(V) For each bighorn sheep with a horn length of at least one-half curl, twenty-five thousand dollars;

(VI) For each mountain goat, ten thousand dollars;

(VII) For each pronghorn antelope with a horn length of at least fourteen inches, four thousand dollars.

(b) (I) Notwithstanding the provisions of section 24-4.2-104 (1) (b) (II), C.R.S., no victims and witnesses assistance and law enforcement fund surcharge shall be levied against the additional amount of the penalty imposed under this subsection (3.4). The victims and witnesses assistance and law enforcement fund surcharge shall only be levied against the amount of the fine imposed under subsection (3) of this section.

(II) Notwithstanding the provisions of section 33-6-105, all moneys collected as additional penalties under this subsection (3.4) shall be transmitted to the state treasurer, who shall credit such moneys to the Colorado town, city, county, or city and county where the arrest for the offense was made or the citation for the offense was issued. Such additional penalties may be used to further law enforcement or wildlife related programs.

(4) It is unlawful for any person to have in his possession in Colorado any nonnative or exotic wildlife except in accordance with the rules and regulations of the commission. Any person who violates this subsection (4) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars. In addition, such person shall be assessed ten suspension

points per incident for possessing an animal on the prohibited species list and five suspension points per incident for possessing any other nonnative or exotic wildlife species.

Source: **L. 84:** Entire article R&RE, p. 870, § 1, effective January 1, 1985. **L. 90:** (2.5) and (4) added and IP(3) amended, pp. 1531, 1528, §§ 4, 3, effective July 1. **L. 94:** (1) and (3) amended, p. 1584, § 12, effective May 31. **L. 98:** (3.4) added, p. 492, § 1, effective April 22. **L. 2003:** IP(3), (3)(a), (3)(b), and (3)(e) amended, p. 1942, § 6, effective May 22. **L. 2005:** (3)(d) amended, p. 476, § 10, effective January 1, 2006. **L. 2008:** IP(3) and (3)(b) amended, p. 280, § 1, effective July 1.

Editor’s note: This section is similar to former §§ 33-6-104 and 33-6-125 as they existed prior to 1984.

ANNOTATION

Illegal possession of wildlife requires a showing that the person illegally had wildlife in his or her possession. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

Persons hunting with valid hunting licenses not exempt from these provisions. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

The general assembly enacted different penal provisions for each offense, identified each with a different title, and, thus, intended to establish more than one offense; therefore, violations of this section and §§ 33-6-111, 33-6-117, and 33-6-119 constitute separate offenses. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

33-6-110. Division action to recover possession and value of wildlife unlawfully taken. (1) The division may bring and maintain a civil action against any person, in the name of the people of the state, to recover possession or value or both possession and value of any wildlife taken in violation of articles 1 to 6 of this title. A writ of replevin may issue in such an action without bond. No previous demand for possession shall be necessary. If costs or damages are adjudged in favor of the defendant, the same shall be paid out of the wildlife cash fund. Neither the pendency of such civil action nor a criminal prosecution for the same taking shall be a bar to the other; nor shall anything in this section affect the right of seizure under other provisions of articles 1 to 6 of this title. The following shall be considered the minimum value of the wildlife unlawfully taken or possessed and may be recovered in addition to recovery of possession of the wildlife:

- (a) For each eagle, member of an endangered species, rocky mountain goat, moose, rocky mountain bighorn sheep, or lynx\$ 1,000
- (b) For each elk or member of a threatened species or subspecies\$ 700
- (c) For each pronghorn, deer, black bear, or mountain lion\$ 500
- (d) For each raptor not covered by paragraph (a) or (b) of this subsection
- (1) and each wild turkey\$ 200
- (e) For each member of nongame or small game species or subspecies not covered by paragraph (a) or (b) of this subsection (1)\$ 100
- (f) For each game fish not covered by paragraph (a) or (b) of this subsection (1)\$ 35
- (2) No verdict or judgment recovered by the state in such an action shall be for a sum less than the sum fixed in this section but may be for such greater sum as the evidence may show the value of the wildlife to have been when living and uninjured.

Source: **L. 84:** Entire article R&RE, p. 871, § 1, effective January 1, 1985. **L. 2005:** (1)(c) amended, p. 476, § 11, effective January 1, 2006.

Editor’s note: This section is similar to former § 33-6-104 as it existed prior to 1984.

33-6-111. Inspection of license and wildlife - check stations - failure to tag - eluding an officer. (1) Any person who hunts, traps, fishes, or possesses wildlife for any purpose shall produce all applicable licenses issued to him by the division, all firearms, all records required to be maintained by articles 1 to 6 of this title or by any rule or regulation of the

commission, all wildlife, and any personal identification documents when requested to do so by a district wildlife manager or other peace officer, as defined in section 33-1-102 (32) empowered to enforce articles 1 to 6 of this title. Any person who refuses to permit inspection of such personal identification documents, licenses, firearms, records, or wildlife is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of five license suspension points.

(2) The division is authorized to establish check stations, as needed, at locations within the state to aid in the management of wildlife and the enforcement of articles 1 to 6 of this title and the rules or regulations of the commission. Persons who encounter check stations, whether in possession of wildlife or not, shall stop and produce licenses issued by the division, firearms, and wildlife for inspection by division personnel. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and an assessment of five license suspension points.

(3) Any person who fails to void his license or carcass tag as required by commission rule or regulation is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of ten license suspension points.

(4) It is unlawful for any person to elude or attempt to elude by any means a Colorado wildlife officer or other peace officer after having received a visual or audible signal such as a red or red and blue light, siren, or voice command directing him to stop. Any person who violates this subsection (4) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars and an assessment of ten license suspension points. In addition, the court shall require the person to pay for any damages caused to any public or private real or personal property damaged while eluding an officer.

Source: L. 84: Entire article R&RE, p. 872, § 1, effective January 1, 1985. L. 2003: (4) amended, p. 1630, § 69, effective August 6.

Editor's note: This section is similar to former §§ 33-6-102, 33-6-108, and 33-6-110 as they existed prior to 1984.

ANNOTATION

The general assembly enacted different penal provisions for each offense, identified each with a different title, and, thus, intended to establish more than one offense; therefore, violations of this section and §§ 33-6-109, 33-6-117,

and 33-6-119 constitute separate offenses. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

Applied in *People v. Benner*, 187 Colo. 309, 530 P.2d 964 (1975).

33-6-112. Evidence of wildlife sex and species. The commission may establish by rules or regulations requirements for preserving the evidence of sex or species or both sex and species of wildlife taken under the provisions of articles 1 to 6 of this title. It is unlawful for any person to possess any wildlife or considerable portion thereof in violation of such rules or regulations. For the purposes of this section, the evidence of species or sex may be one or more of the following: Head, antlers, horns, testes, scrotum, udder, spurred leg, wing, skin, or plumage in sufficient amount to allow the evidence of species or sex to be determined by ordinary inspection. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall, with respect to big game, be punished by a fine of one hundred dollars and an assessment of ten license suspension points or shall, with respect to all other wildlife, be punished by a fine of fifty dollars and an assessment of five license suspension points.

Source: L. 84: Entire article R&RE, p. 872, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-109 as it existed prior to 1984.

33-6-113. Illegal sale of wildlife. (1) (a) Except as otherwise provided in articles 1 to 6 of this title or by rule of the commission, it is unlawful for any person to knowingly sell or purchase, or knowingly offer for sale or purchase, wildlife or to solicit another person in the illegal hunting or taking of wildlife for the purposes of monetary or commercial gain or profit.

(b) For the purposes of this section, it is deemed to be a sale of wildlife if a person, for monetary or other consideration, provides unregistered outfitting services as defined in article 55.5 of title 12, C.R.S.

(2) Any person who violates this section:

(a) With respect to big game, endangered species, or eagles, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Upon such conviction, the commission may suspend any or all wildlife license privileges of the person for a minimum of one year to life.

(b) With respect to all other wildlife, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and an assessment of twenty license suspension points.

Source: L. 84: Entire article R&RE, p. 873, § 1, effective January 1, 1985. L. 85: (2)(a) amended, p. 659, § 11, effective July 1. L. 94: (1) and (2)(a) amended, p. 1586, § 13, effective May 31. L. 2002: (2)(a) amended, p. 1544, § 294, effective October 1. L. 2008: (1) amended, p. 537, § 1, effective August 5.

Editor's note: This section is similar to former §§ 33-6-125 and 33-6-126 as they existed prior to 1984.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

33-6-113.5. Illegal businesses on division property. (1) It is unlawful to provide goods or services for compensation on property owned or managed by the division unless permitted by commission rule.

(2) A person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and an assessment of twenty license suspension points.

Source: L. 2003: Entire section added, p. 1033, § 12, effective July 1.

33-6-114. Transportation, importation, exportation, and release of wildlife. (1) It is unlawful for any person to transport or to export any wildlife or portion thereof within or from this state except in accordance with the rules or regulations of the commission.

(2) It is unlawful for any person to import any live wildlife into this state unless an importation license is obtained prior to importation, a current and valid health certificate accompanies each shipment, and such importation is in accordance with the rules and regulations of the commission.

(3) It is unlawful for any person to release, or knowingly allow the escape of, any live native or nonnative or exotic wildlife in Colorado except in accordance with the rules and regulations of the commission.

(3.5) This section does not apply to the transportation, importation, exportation, and release of live native or nonnative fish or viable gametes (eggs and sperm) which are governed by section 33-6-114.5.

(4) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars for violations involving native wildlife and by a fine of not less than two hundred fifty dollars nor more than one thousand dollars for violations involving nonnative or exotic wildlife. In addition, for violations involving either native wildlife or nonnative or exotic wildlife, five license suspension

points per incident may be assessed by the division against an individual's license privileges.

(5) This section shall not apply to aquatic nuisance species, which shall be governed by article 10.5 of this title.

Source: **L. 84:** Entire article R&RE, p. 873, § 1, effective January 1, 1985. **L. 90:** (3) and (4) amended and (3.5) added, pp. 1529, 1531, §§ 4, 5, effective July 1. **L. 2008:** (5) added, p. 1588, § 3, effective May 29.

33-6-114.5. Native and nonnative fish - possession, transportation, importation, exportation, and release - penalties. (1) It is unlawful for any person to possess, transport, import, or export any live native or nonnative fish or viable gametes (eggs or sperm) except in accordance with the rules and regulations of the commission.

(2) It is unlawful for any person to possess live native or nonnative fish or viable gametes (eggs or sperm) which are infected with any disease designated by rule and regulation of the commission as a disease detrimental to existing fish populations or habitats unless the division is notified within two business days after the discovery of the presence of such a disease.

(3) It is unlawful for any person to possess live native or nonnative fish or viable gametes (eggs or sperm) which are of a species designated by rule and regulation of the commission as detrimental to existing fish populations or habitats.

(4) It is unlawful for any person to import any live native or nonnative fish or viable gametes (eggs or sperm) into this state unless, in accordance with the rules and regulations of the commission, both a current and valid importation license and health certificate are obtained prior to importation.

(5) It is unlawful for any person to release any live native or nonnative fish or viable gametes (eggs or sperm) in this state except in accordance with the rules and regulations of the commission.

(6) It is unlawful for any person to transport, import, export, or release any live native or nonnative fish or viable gametes (eggs or sperm) in violation of any quarantine order or disposition plan issued in accordance with any provisions of articles 1 to 6 of this title or any rule or regulation of the commission.

(7) (a) Any person who violates subsection (2), (3), or (4) of this section is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars.

(b) Any person who violates subsection (5) or (6) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars. Such person is liable for all damages and costs associated with such unlawful release, including, but not limited to, the costs of eradication or removal.

(c) Repealed.

(8) This section shall not apply to aquatic nuisance species, which shall be governed by article 10.5 of this title.

Source: **L. 90:** Entire section added, p. 1531, § 6, effective July 1. **L. 91:** (7)(c) added, p. 199, § 5, effective June 7. **L. 2003:** (7)(c) repealed, p. 1942, § 7, effective May 22. **L. 2008:** (8) added, p. 1589, § 4, effective May 29.

33-6-115. Theft of wildlife - tampering with trap. (1) It is unlawful for any person to take from another person, without his permission, any wildlife lawfully acquired and possessed by him. Any person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars and an assessment of twenty license suspension points. Any person having wildlife taken from him unlawfully as prohibited in this subsection (1) shall be entitled to compensation as ordered by the court.

(2) It is unlawful for any person to interfere with, disturb, remove, or otherwise tamper with any trap, snare, or other device that has been legally set. Any person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of ten license suspension points.

Source: L. 84: Entire article R&RE, p. 873, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-122 as it existed prior to 1984.

33-6-115.5. Hunting, trapping, and fishing - intentional interference with lawful activities. (1) No person shall willfully prevent or interfere with the lawful participation of any individual in the activity of hunting, trapping, or fishing in accordance with this article.

(2) A person commits intentional interference with lawful hunting, trapping, and fishing activities if he:

(a) Acts with intent to alarm, distract, or frighten prey and causes prey to flee by:

(I) Use of any natural or artificial source of noise or light;

(II) Giving chase to prey on foot or by use of any vehicle;

(III) Throwing objects or making movements;

(b) Intentionally harasses any person lawfully participating in the activity of hunting, trapping, and fishing by use of threats or actions;

(c) Erects barriers with the intent to deny ingress to lawfully designated hunting, trapping, and fishing areas;

(d) Intentionally interjects himself into the line of fire;

(e) Engages in any other conduct with the intent to disrupt or prevent lawful hunting, trapping, and fishing activities.

(3) Any person who violates this section commits a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars and an assessment of twenty license suspension points.

(4) Any person convicted of a violation of this section shall be liable for all damages incurred by the individual whose lawful activity was obstructed and for all court costs of prosecution.

(5) Nothing in this section shall limit the actions of law enforcement officers and personnel of the division of parks and wildlife in the performance of their official duties nor apply to landowners, tenants, or leaseholders exercising their legal rights to the enjoyment of land, including, but not limited to, farming, ranching, and restricting trespass, nor will anything in this section be construed to prohibit any incidental interference arising from the lawful use of land or water.

Source: L. 88: Entire section added, p. 1161, § 1, effective July 1. L. 95: (3) amended, p. 1107, § 50, effective May 31. L. 2003: (3) amended, p. 1943, § 8, effective May 22.

33-6-116. Hunting, trapping, or fishing on private property - posting public lands.

(1) It is unlawful for any person to enter upon privately owned land or lands under the control of the state board of land commissioners to hunt or take any wildlife by hunting, trapping, or fishing without first obtaining permission from the owner or person in possession of such land.

(2) It is unlawful for any person to post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.

(3) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and an assessment of twenty license suspension points.

Source: L. 84: Entire article R&RE, p. 874, § 1, effective January 1, 1985. L. 87: (1) amended, p. 1269, § 1, effective July 1. L. 94: (1) amended, p. 1586, § 14, effective May 31.

Editor's note: This section is similar to former § 33-6-123 as it existed prior to 1984.

33-6-117. Willful destruction of wildlife - legislative intent. (1) (a) Except as is otherwise provided in articles 1 to 6 of this title or by rule of the commission, it is unlawful for a person:

(I) To hunt or take, or to solicit another person to hunt or take, wildlife and detach or remove, with the intent to abandon the carcass or body, only the head, hide, claws, teeth, antlers, horns, internal organs, or feathers or any or all of such parts;

(II) To intentionally abandon the carcass or body of taken wildlife; or

(III) To take and intentionally abandon wildlife.

(b) A person who violates this subsection (1), with respect to:

(I) Big game, eagles, and endangered species, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and, in addition, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1.3-401 (1) (a) (III), C.R.S. Upon such conviction, the commission shall assess twenty license suspension points and suspend the wildlife license privileges for one year to life of the person convicted.

(II) All other wildlife species, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and an assessment of twenty license suspension points.

(2) The purpose and intent of this section is to protect the wildlife of this state from wanton, ruthless, or wasteful destruction or mutilation for their heads, hides, claws, teeth, antlers, horns, internal organs, or feathers, from being taken and abandoned, or any or all of the foregoing, and the provisions of this section shall be so construed.

Source: **L. 84:** Entire article R&RE, p. 874, § 1, effective January 1, 1985. **L. 85:** (1)(a) amended, p. 659, § 12, effective July 1. **L. 94:** IP(1) amended, p. 1586, § 15, effective May 31. **L. 2002:** (1)(a) amended, p. 1544, § 295, effective October 1. **L. 2003:** IP(1), (1)(a), and (2) amended, p. 1029, § 3, effective July 1. **L. 2008:** (1) amended, p. 537, § 2, effective August 5.

Editor's note: This section is similar to former § 33-6-106 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

The intent element for the crime of killing and abandoning wildlife is that of knowingly. In order to be guilty of killing and abandoning wildlife, the defendant must "knowingly" kill and abandon wildlife. *People v. Lawrence*, 55 P.3d 155 (Colo. App. 2001) (decided prior to 2008 amendment to subsection (1)).

The mental state "knowingly" is implied by "to take and abandon wildlife" because the language of the abandonment offense logically requires knowing that one abandoned wildlife. Nothing in that language is tied to specific intent, recklessness, or neglect. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007) (decided prior to 2008 amendment to subsection (1)).

With the words, "to hunt or take...wildlife and detach or remove, with the intent to abandon the carcass or body, only the head, hide, claws, teeth, antlers, horns, internal organs, or feathers, or any or all of such parts", the general assembly made it an offense to hunt or kill an

animal with the intent to keep only certain parts and to abandon the rest of the carcass. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

"Abandon" is used here in its ordinary sense. No special, legal meaning is ascribed to the term, and it was not necessary that defendant break camp or leave the state to be found to have abandoned elk carcasses. *People v. Dobson*, 847 P.2d 176 (Colo. App. 1992).

The phrase "to abandon the carcass or body of such wildlife; or to take and abandon wildlife" is to be read to stand on its own. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

Willful destruction of wildlife requires proof that a person removed the trophy portions of any wild animal and abandoned the carcass. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

The general assembly enacted different penal provisions for each offense, identified each with a different title, and, thus, intended to es-

establish more than one offense; therefore, violations of this section and §§ 33-6-109, 33-6-111, and 33-6-119 constitute separate offenses. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

33-6-118. Killing of big game animals in contest prohibited. It is unlawful for any person to advertise, conduct or offer to conduct, or otherwise promote or participate in any contest or competition involving two or more persons and the monetary payment or awarding of any other prize when the object of the contest or competition involves the killing of any big game or the display for comparison of any big game or any part thereof. Certificates issued by organizations solely for registration and recognition of animals legally taken are not prohibited. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five hundred dollars and an assessment of twenty license suspension points.

Source: L. 84: Entire article R&RE, p. 874, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-141 as it existed prior to 1984.

33-6-119. Pursuit of wounded game - waste of edible game wildlife - use of wildlife as bait. (1) (a) Except as provided in section 33-6-116 (1), it is unlawful for a person who shoots at, wounds, or may have wounded game wildlife to fail to make a reasonable attempt to locate the game wildlife suspected of injury and take it into his or her possession. A person who violates this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall, with respect to big game, be punished by a fine of one hundred dollars and an assessment of fifteen license suspension points or shall, with respect to small game, be punished by a fine of fifty dollars and an assessment of fifteen license suspension points.

(b) If wounded game goes onto private property, the person who wounded the game shall make a reasonable attempt to contact the landowner or person in charge of such land before pursuing the wounded game.

(c) If the hunter is unaware of the location of wildlife after shooting at it, failing to go immediately to the location of such wildlife when the shot was fired is not a reasonable attempt to locate game.

(2) Except as otherwise provided in articles 1 to 6 of this title or by rule of the commission, it is unlawful for a person to fail to reasonably attempt to dress or care for and provide for human consumption the edible portions of game wildlife. A person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall, with respect to big game, be punished by a fine of three hundred dollars and an assessment of fifteen license suspension points or shall, with respect to all other game wildlife, be punished by a fine of one hundred dollars and an assessment of ten license suspension points.

(3) It is unlawful for any person to use wildlife as bait unless otherwise provided by rule or regulation of the commission. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and an assessment of ten license suspension points.

Source: L. 84: Entire article R&RE, p. 875, § 1, effective January 1, 1985. L. 2003: (1)(a) and (2) amended and (1)(c) added, p. 1032, § 10, effective July 1.

Editor's note: This section is similar to former § 33-6-107 as it existed prior to 1984.

ANNOTATION

Persons hunting with valid hunting licenses not exempt from these provisions. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

The general assembly enacted different penal provisions for each offense, identified each

with a different title, and, thus, intended to establish more than one offense; therefore, violations of this section and §§ 33-6-109, 33-6-111, and 33-6-117 constitute separate offenses. *People v. Gordon*, 160 P.3d 284 (Colo. App. 2007).

33-6-120. Hunting, trapping, or fishing out of season or in a closed area. (1) It is unlawful for any person to fish, trap, hunt, or take any wildlife outside of the season established by or in an area closed by commission rule. Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine and an assessment of license suspension points as follows:

(a) For each incident that is not related to the hunting or taking of a big game animal, the fine shall be equal to twice the cost of the most expensive license for such species and ten license suspension points shall be assessed;

(b) For the hunting or taking of big game, fifteen license suspension points and a fine that is equal to twice the cost of the most expensive license for such species shall be assessed.

Source: L. 84: Entire article R&RE, p. 875, § 1, effective January 1, 1985. L. 94: Entire section amended, p. 1586, § 16, effective May 31. L. 2003: Entire section amended, p. 1943, § 9, effective May 22.

33-6-121. Hunters to wear daylight fluorescent orange garments. (1) Unless otherwise provided by commission rule, it is unlawful for any person to hunt or take elk, deer, pronghorn, moose, or black bear with any firearm unless such person is wearing daylight fluorescent orange garments that meet the following requirements:

(a) Garments shall be solid daylight fluorescent orange colored material and shall be of sufficient brightness to be seen conspicuously from a reasonable distance.

(b) Garments shall be a minimum of five hundred square inches and shall be worn as an outer garment above the waist, part of which shall be a hat or head covering visible from all directions.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of five license suspension points.

Source: L. 84: Entire article R&RE, p. 875, § 1, effective January 1, 1985. L. 94: IP(1) amended, p. 1587, § 17, effective May 31. L. 2003: IP(1) amended, p. 1033, § 11, effective July 1. L. 2005: IP(1) amended, p. 476, § 12, effective January 1, 2006.

Editor's note: This section is similar to former § 33-6-111 as it existed prior to 1984.

ANNOTATION

Applied in *Prochaska v. Marcoux*, 632 F.2d 848 (10th Cir. 1980), cert. denied, 451 U.S. 984, 101 S. Ct. 2316, 68 L. Ed. 2d 841 (1981).

33-6-122. Hunting in a careless manner. It is unlawful for any person to hunt or take wildlife in a careless manner or to discharge a firearm or release an arrow in a careless manner which endangers human life or property. For the purposes of this section, "careless" means failing to exercise the degree of reasonable care that would be exercised by a person of ordinary prudence under all the existing circumstances in consideration of the probable danger of injury or damage. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for up to one year, or by both such fine and imprisonment, and an assessment of twenty license suspension points.

Source: L. 84: Entire article R&RE, p. 876, § 1, effective January 1, 1985. L. 94: Entire section amended, p. 1587, § 18, effective May 31.

Editor's note: This section is similar to former § 33-6-113 as it existed prior to 1984.

33-6-123. Hunting under the influence. It is unlawful for any person who is under the influence of alcohol or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or any other drug to a degree that renders such person incapable of safely operating a firearm or bow and arrow to hunt or take any wildlife in this state. The fact that any person charged with a violation of this section is or has been entitled to use such controlled substance or drug under the laws of this state shall not constitute a defense against any charge of violating this section. For the purposes of this section, being under the influence of any drug shall include the use of glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and an assessment of twenty license suspension points.

Source: **L. 84:** Entire article R&RE, p. 876, § 1, effective January 1, 1985. **L. 94:** Entire section amended, p. 1587, § 19, effective May 31. **L. 2012:** Entire section amended, (HB 12-1311), ch. 281, p. 1630, § 81, effective July 1.

Editor's note: This section is similar to former § 33-6-112 as it existed prior to 1984.

33-6-124. Use of a motor vehicle or aircraft - rules - repeal. (1) (a) Unless otherwise permitted by commission rule, it is unlawful for a person to hunt, take, or harass wildlife from or with a motor vehicle. A person who violates this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of ten license suspension points.

(b) Unless otherwise permitted by commission rule, it is unlawful for any person to discharge a firearm or release an arrow from a motor vehicle with the intent to take wildlife. A person who violates this paragraph (b) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of ten license suspension points.

(2) It is unlawful for any person airborne in any aircraft to spot or locate any wildlife and communicate its location to a person on the ground as an aid to hunting or pursuing wildlife; and it is unlawful for such airborne person or person on the ground receiving such communication to pursue, hunt, or take game on the same day or the day following such flight. A person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two thousand dollars and an assessment of fifteen license suspension points.

(3) It is unlawful for two or more people on the ground, in a motor vehicle, or in a vessel to use electronic devices to communicate information in the furtherance of a violation of articles 1 to 6 of this title or of a commission rule. A person who violates this subsection (3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of fifteen license suspension points.

(4) (a) Except as otherwise provided in paragraph (d) of this subsection (4), it is unlawful for a person to operate a motor vehicle on any federal public land, trail, or road unless the federal public land, trail, or road is signed or otherwise authorized for such use. Enforcement of this section within an administrative unit of federal public land shall not commence until the controlling land management agency identifies whether a route is available for motorized travel by maps, route markers, or signs that are available to the public and provide information to determine whether the route is authorized. Except for violations occurring within a federal wilderness area, a person who violates this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and, if the person was engaged in the act of hunting, fishing, trapping, or a related activity at the time of the unlawful activity, by a penalty of ten license suspension points. A person who violates this paragraph (a) within a federal wilderness area is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and, if the person was engaged in the act of hunting, fishing, trapping, or

a related activity at the time of the unlawful act, by a penalty of fifteen license suspension points.

(b) A person who, without authorization, removes, defaces, or destroys any sign that is located on federal public land that affects whether motor vehicle travel is authorized that was installed by the controlling land management agency or installs a sign located on federal public land that affects whether motor vehicle travel is authorized is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and, if the person was engaged in the act of hunting, fishing, or trapping, or a related activity at the time of the unlawful activity, by a penalty of five license suspension points.

(c) A peace officer may enforce this subsection (4).

(d) (I) The prohibition and penalties expressed in paragraphs (a) and (b) of this subsection (4) shall not apply to a peace officer in the performance of his or her official duties, a person acting at the direction of a peace officer, or a person otherwise authorized to operate a motor vehicle on the federal public land, trail, or road by legal right or by permission of the controlling land management agency, including, but not limited to, administrative and emergency access, facility maintenance, ski area operations, oil and gas operations, logging operations, and motor vehicle use that is authorized under permits, including for special events, recreational uses, firewood gathering, and livestock operations and activities.

(II) Nothing in this subsection (4) shall affect any authority that the commission has pursuant to law other than this subsection (4) to regulate motor vehicle travel on lands subject to the commission's jurisdiction.

(III) If conduct violates both this subsection (4) and section 33-14.5-108 (1) (h), enforcement shall occur only pursuant to this subsection (4).

(e) The director shall prepare an annual report to the members of the senate committee on agriculture, natural resources, and energy and the house committee on agriculture, livestock, and natural resources, or their successor committees, concerning the number of citations issued for a violation of this subsection (4), the number of final convictions for a violation of this subsection (4), and the status of the controlling land management agencies' efforts to notify the public of travel restrictions.

(f) This subsection (4) is repealed, effective July 1, 2013.

Source: **L. 84:** Entire article R&RE, p. 876, § 1, effective January 1, 1985. **L. 94:** (1) and (2) amended, p. 1587, § 20, effective May 31. **L. 2003:** Entire section amended, p. 1029, § 4, effective July 1. **L. 2008:** (4) added, p. 145, § 2, effective July 1.

Editor's note: This section is similar to former § 33-6-114 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2008 act enacting subsection (4), see section 1 of chapter 54, Session Laws of Colorado 2008.

33-6-125. Possession of a loaded firearm in a motor vehicle. It is unlawful for any person, except a person authorized by law or by the division, to possess or have under his control any firearm, other than a pistol or revolver, in or on any motor vehicle unless the chamber of such firearm is unloaded. Any person in possession or in control of a rifle or shotgun in a motor vehicle shall allow any peace officer, as defined in section 33-1-102 (32), who is empowered and acting under the authority granted in section 33-6-101 to enforce articles 1 to 6 of this title to inspect the chamber of any rifle or shotgun in the motor vehicle. For the purposes of this section, a "muzzle-loader" shall be considered unloaded if it is not primed, and, for such purpose, "primed" means having a percussion cap on the nipple or flint in the striker and powder in the flash pan. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of fifteen license suspension points.

Source: **L. 84:** Entire article R&RE, p. 876, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-115 as it existed prior to 1984.

Cross references: For offenses relating to firearms, see article 12 of title 18.

33-6-126. Shooting from a public road. It is unlawful for any person, except a duly authorized peace officer acting in the line of duty, to discharge any firearm or release an arrow from, upon, or across any public road. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars and an assessment of five license suspension points.

Source: L. 84: Entire article R&RE, p. 877, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-116 as it existed prior to 1984.

33-6-127. Hunting with artificial light, night vision, or thermal imaging devices. (1) (a) Unless otherwise provided by commission rule and except as provided in section 33-6-107 (9) for persons owning or leasing land, members of their family, or their agents, it is unlawful for any person to utilize any artificial light as an aid in hunting or taking any wildlife. For the purposes of this subsection (1), the possession of any firearm with cartridges in the chamber or magazine or loaded with powder and ball or a strung bow, unless the bow is cased, while attempting to project any artificial light into areas where wildlife may be found is prima facie evidence of a violation of this section.

(b) A person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of twenty license suspension points.

(2) (a) Unless otherwise provided by commission rule and except as provided in section 33-6-107 (9) for persons owning or leasing land, members of their family, or their agents, it is unlawful for a person to utilize electronic night vision equipment, electronically enhanced light-gathering optics, or thermal imaging devices as an aid in hunting or taking wildlife outside legal hunting hours according to commission rules.

(b) A person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of two thousand dollars and an assessment of twenty license suspension points.

Source: L. 84: Entire article R&RE, p. 877, § 1, effective January 1, 1985. L. 94: Entire section amended, p. 1588, § 21, effective May 31. L. 2003: Entire section amended, p. 1030, § 5, effective July 1.

Editor's note: This section is similar to former § 33-6-119 as it existed prior to 1984.

33-6-128. Damage or destruction of dens or nests - harassment of wildlife. (1) Unless permitted by the division, it is unlawful for any person to willfully damage or destroy any wildlife den or nest or their eggs or to harass any wildlife. Any person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars and an assessment of ten license suspension points. For the purposes of this subsection (1), nothing shall prohibit the removal of wildlife dens or nests when necessary to prevent damage to property or livestock or while trapping.

(2) Unless otherwise allowed by commission rule or regulation, it is unlawful for any person to knowingly or negligently allow or direct a dog which he owns or which is under his control to harass wildlife, whether or not the wildlife is actually injured by such dog. Any person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars.

(3) A Colorado wildlife officer or other peace officer may capture or kill any dog he or she determines to be harassing wildlife. The provisions of this subsection (3) shall not apply to dogs that are under the direct personal control of a person.

Source: L. 84: Entire article R&RE, p. 877, § 1, effective January 1, 1985. L. 2003: (3) amended, p. 1631, § 70, effective August 6.

Editor's note: This section is similar to former §§ 33-6-138 and 33-6-139 as they existed prior to 1984.

33-6-129. Damage to property or habitat under division control. (1) It is unlawful for any person to remove, damage, deface, or destroy any real or personal property or wildlife habitat under the control of the division. Any person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition, the court may require the defendant to reimburse the division for any damages.

(2) It is unlawful for any person to use any division property in violation of any commission rule or regulation. Any person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars.

Source: L. 84: Entire article R&RE, p. 877, § 1, effective January 1, 1985.

Editor's note: This section is similar to former § 33-6-124 as it existed prior to 1984.

33-6-130. Explosives, toxicants, and poisons not to be used. (1) Unless permitted by law or by the division, it is unlawful for any person to use toxicants, poisons, drugs, dynamite, explosives, or any stupefying substances for the purpose of hunting, taking, or harassing any wildlife. Any person who violates this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars and an assessment of twenty license suspension points.

(2) The division shall cooperate with the department of agriculture in developing policies and procedures for the issuance by said department of permits for the use of poison by livestock owners or operators.

Source: L. 84: Entire article R&RE, p. 878, § 1, effective January 1, 1985. **L. 94:** (1) amended, p. 1588, § 22, effective May 31.

Editor's note: This section is similar to former § 33-6-118 as it existed prior to 1984.

33-6-131. Knowingly luring bears. (1) Unless otherwise permitted by commission rule, it is unlawful for any person to place food or edible waste in the open with the intent of luring a wild bear to such food or edible waste.

(2) (a) This section shall not apply to acts related to agriculture, as defined in section 35-1-102 (1), C.R.S.

(b) For the purposes of this section, "food or edible waste" shall not include live animals or food that is grown in the open prior to such food being harvested.

(3) Any person who violates this section shall be given a warning. Upon a second or subsequent violation of this section, such person is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed:

(a) One hundred dollars for a first offense;

(b) Five hundred dollars for a second offense;

(c) One thousand dollars for a third or subsequent offense.

Source: L. 2003: Entire section added, p. 2618, § 1, effective June 5.

33-6-132. Computer-assisted remote hunting prohibited. (1) It is unlawful for any person to engage in computer-assisted remote hunting in Colorado. This subsection (1) shall apply if either the wildlife hunted or any device, equipment, or software, including, without limitation, the person's own computer, used to remotely control the weapon is located in Colorado.

(2) It is unlawful for any person to establish or operate computer-assisted remote hunting facilities in Colorado.

(3) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof:

(a) For a first offense, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars and an assessment of twenty license points;

(b) For any subsequent offenses, shall be punished by a fine of not less than ten thousand dollars nor more than one hundred thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition to imposing such punishments, the commission may suspend any wildlife privileges of the person for a minimum of one year to a maximum of a lifetime suspension.

(4) This section shall not apply to persons who provide only:

(a) General-purpose equipment, including computers, cameras, and fencing and building materials;

(b) General-purpose computer software, including operating systems and communication programs; or

(c) General-purpose telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with internet access.

(5) Nothing in this section shall preclude the division of parks and wildlife from establishing a special licensing program for mobility-impaired hunters pursuant to section 33-4-119 and rules adopted pursuant to section 33-4-119 or from granting reasonable accommodations for persons with disabilities in accordance with the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

Source: L. 2008: Entire section added, p. 282, § 2, effective August 5.

PART 2

TRAPS, POISONS, AND SNARES

33-6-201. Legislative declaration - scope and purpose of part. (1) The general assembly finds, determines, and declares that:

(a) The purpose of this part 2 is to implement section 12b of article XVIII of the state constitution, adopted by the people at the 1996 general election.

(b) The provisions of this part 2 are intended to honor the expressed desire of the people of Colorado to promote humane methods of animal control and discourage the use of inhumane methods while preserving the ability to protect human life, health, safety, and property by taking wildlife when there is no practical alternative.

(c) Whenever possible, this part 2 should be read in conjunction and harmony with the other provisions of this title and with sections 35-40-101 and 35-40-102, C.R.S.; except that, in case of conflict, the provisions of this part 2 shall prevail.

Source: L. 97: Entire part added, p. 1065, § 1, effective May 27. **L. 2006:** (1)(a) amended, p. 1506, § 53, effective June 1.

33-6-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Department of health" means a governmental entity with the responsibility to prevent or alleviate diseases and other biological or environmental hazards to human health or safety. The term specifically includes, without limitation, the department of public health and environment, created in section 25-1-102, C.R.S., and every department or agency at the county or local level that is charged with comparable powers and duties.

(2) "Human health or safety" means the physical health or safety of individual human beings. The term does not encompass economic, aesthetic, or social values or the health of ecosystems.

Source: L. 97: Entire part added, p. 1066, § 1, effective May 27.

33-6-203. General prohibition - penalties. (1) Except as otherwise provided in this part 2, it is unlawful to take wildlife with any leghold trap, any instant kill body-gripping

design trap, or by poison or snare in the state of Colorado. Penalties shall be as provided in section 33-6-109 unless a different penalty is specifically provided in this part 2.

(2) Except as otherwise provided in this part 2, any person who attempts to take wildlife using any leghold trap, instant kill body-gripping design trap, poison, or snare commits a class 1 petty offense and, upon conviction thereof, shall be punished by a fine of forty dollars and an assessment of four license suspension points.

(3) An owner or lessee of private property or an employee of such owner or lessee, as such terms are defined and used in sections 33-6-207 and 33-6-208, who takes wildlife using any leghold trap, instant kill body-gripping design trap, poison, or snare on such private property under circumstances that give rise to the exemption set forth in section 33-6-207 (1) but without complying with the notice and certification requirements of section 33-6-208 (1) (c) commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of twenty-five dollars; except that, upon conviction of a second or subsequent offense, the fine shall be fifty dollars.

(4) Any person convicted of violating subsection (1) or (2) of this section shall be subject to twice the applicable penalty if the offense occurred pursuant to an unlawful entry onto the privately owned or leased property of another.

Source: L. 97: Entire part added, p. 1066, § 1, effective May 27.

ANNOTATION

This section does not expressly or implicitly create a private cause of action and therefore a non-state plaintiff lacks standing to enforce it. Additionally, this section expressly does not ap-

ply to rodents, including prairie dogs. *Prairie Dog Advocates v. City of Lakewood*, 20 P.3d 1203 (Colo. App. 2000).

33-6-204. General exemptions - conduct “authorized by law”. (1) Section 33-6-203 shall not apply to:

(a) The taking of birds or of rodents, other than beaver or muskrat, as authorized by law; or

(b) The taking of fish or other nonmammalian aquatic wildlife by the division.

(2) Nothing in this part 2 shall be construed to prohibit the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as authorized by law.

Source: L. 97: Entire part added, p. 1066, § 1, effective May 27.

33-6-205. Exemption - departments of health. (1) Section 33-6-203 shall not apply to the taking of wildlife by federal, state, county, or municipal departments of health for the purpose of protecting human health or safety.

(2) (a) To ensure that the taking of wildlife pursuant to subsection (1) of this section is accomplished in as competent, safe, effective, and humane a manner as is possible, a department of health may contract with an independent contractor or, by appropriate intergovernmental agreement, enlist the aid of qualified employees or agents of the division, the United States department of agriculture, the state department of agriculture, or a local police department or animal control agency for the taking of wildlife.

(b) The commission is authorized to adopt and enforce reasonable rules for the licensing and supervision of persons desiring to act as independent contractors under this section. This paragraph (b) shall not supersede the licensure requirements of the “Pesticide Applicators’ Act”, article 10 of title 35, C.R.S.

Source: L. 97: Entire part added, p. 1067, § 1, effective May 27.

33-6-206. Exemptions - nonlethal methods. (1) Notwithstanding section 33-6-203, but subject to regulation by the commission, authorized persons may use nonlethal snares, traps specifically designed not to kill, or nets to take wildlife for purposes of:

- (a) Bona fide scientific research;
- (b) Falconry;
- (c) Relocation permitted in accordance with rules of the division; or
- (d) Medical treatment of the animal being captured.

Source: L. 97: Entire part added, p. 1067, § 1, effective May 27.

33-6-207. Exemption - landowners' protection of crops and livestock - definitions - authority of division and of department of agriculture. (1) Section 33-6-203 shall not apply to the owner or lessee of a parcel of private property, nor to the employees of such owner or lessee, so long as all of the following conditions are met:

- (a) The property is primarily used for commercial livestock or crop production;
- (b) The use of the methods otherwise prohibited by section 33-6-203 occurs only on the property;
- (c) Such use does not exceed one thirty-day period per year for each parcel of private property; and
- (d) The owner or lessee can present on-site evidence to the division that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by section 33-6-203.

(2) As used in this section and in section 33-6-208:

- (a) "Crops" includes all plants raised for profit.
- (b) "Employee" means a person hired or retained by, or under a written or oral contract or cooperative agreement with, an owner or lessee to perform services of any kind.
- (c) "Lessee" means a person, other than the owner, who has a present possessory interest in real property. If the possessory interest is held by a corporation, partnership, association, or other entity, "lessee" includes the individual shareholders, principals, partners, or members of such entity. If the possessory interest is held in trust, "lessee" includes a beneficiary of such trust.
- (d) "Livestock" includes all animals raised for profit.
- (e) "Ongoing damage" means measurable physical harm to livestock or crops that has resulted or will result in economic loss to an owner or lessee and appears likely to continue or recur in the near future.

(f) (I) "On-site evidence" means physical evidence or documented observations gathered from the property on which trapping, snaring, or poisoning activity is proposed under subsection (1) of this section. Such evidence includes, but is not limited to:

- (A) Carcasses or parts thereof;
- (B) Physical injuries to livestock;
- (C) Identifying tracks, tooth marks, fur, or other evidence of the presence and harmful activity of a depredating species;
- (D) Photographs;
- (E) Record entries.

(II) Where direct evidence has not been preserved, current or recent losses may be considered as "on-site evidence" so long as such losses are documented.

(g) "Owner" means the holder of record title to real property. If the title to real property is held by a corporation, partnership, association, or other entity, "owner" includes the individual shareholders, principals, partners, or members of such entity. If the title to real property is held in trust, "owner" includes a beneficiary of such trust.

(h) "Parcel of private property" means either of the following, at the option of the owner or lessee thereof:

(I) A parcel of private property that has been individually recorded in the office of the county clerk in the county in which the parcel is located; or

(II) A single, contiguous parcel of private property under one ownership or lease.

(i) "Primarily used for commercial livestock or crop production" means used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(j) "Private property" means real property whose record title is not held, wholly or in part, by any state, local, or federal government or agency thereof.

(3) The division and, in the case of depredating animals as defined in section 35-40-100.2 (4), C.R.S., the department of agriculture shall have the authority to adopt and enforce reasonable rules governing trapping, snaring, and poisoning activity under subsection (1) of this section. Such rules may include, without limitation, reasonable restrictions on the devices and, to the extent permissible under section 33-6-209, the poisons to be used and the manner of their use, including a requirement for serial numbering or other identification of devices if such is deemed necessary or desirable. The general assembly specifically endorses the implementation of a coordinated trade-in or pooling program to encourage the phasing out of older, less humane devices and the use, in their place, of newer, more humane ones.

Source: L. 97: Entire part added, p. 1067, § 1, effective May 27.

33-6-208. Thirty-day period - administration - conditions precedent to use of exemption. (1) For purposes of the exemption specified in section 33-6-207:

(a) Where an owner or lessee raises livestock or crops on two or more separate parcels of private property, the exemption stated in section 33-6-207 shall apply separately to each parcel.

(b) The division shall verify that the owner or lessee has made reasonable efforts to alleviate ongoing damage to livestock or crops through reasonable efforts using methods other than those prohibited by section 33-6-203. The use of at least two of the following methods is presumed to represent reasonable efforts:

(I) Routine gathering of livestock in areas where predators are known to be present;

(II) The use of guard animals;

(III) The use of flashing lights, boom guns, or other scare tactics;

(IV) The presence of human herders or guards;

(V) Any other industry-accepted method that is effective in reducing losses and whose use is approved by the agriculture commission and the parks and wildlife commission for that purpose.

(c) (I) An owner or lessee seeking to use the exemption stated in section 33-6-207 shall notify the division by telephone, telefacsimile, or first-class mail before the beginning of each period during which trapping, snaring, or poisoning activity is to take place. Within ten days after giving such notice, the owner or lessee shall provide the division with a written certification that there exists on-site evidence of ongoing damage to livestock or crops and that the owner or lessee has made reasonable efforts to alleviate such damage by the use of alternative methods.

(II) The owner or lessee need not present on-site evidence of damage or of reasonable efforts using alternative methods before commencing trapping, snaring, or poisoning activity, but the owner or lessee shall be prepared to do so upon request of the division at any time within the thirty-day period. The division may, at its option, send an employee or agent to visit the site and verify compliance with the requirements of this section and of section 33-6-207.

Source: L. 97: Entire part added, p. 1069, § 1, effective May 27. L. 2012: IP(1)(b) and (1)(b)(V) amended, (HB 12-1317), ch. 248, p. 1209, § 22, effective June 4.

33-6-209. Poisons - labeling - definitions. (1) Neither the department of public health and environment or any other state or local agency shall impose or continue in effect a labeling requirement for poisons that differs from the requirements imposed by the United States environmental protection agency or by the "Pesticide Act", article 9 of title 35, C.R.S.

(2) For purposes of this section, "poison" means any substance or mixture of substances intended for destroying wildlife, which substance or mixture of substances is registered or required to be registered by the United States environmental protection agency or by the "Pesticide Act", article 9 of title 35, C.R.S.

Source: L. 97: Entire part added, p. 1070, § 1, effective May 27.

ARTICLE 7

Snowmobiles

33-7-101 to 33-7-120. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor’s note: (1) The substantive provisions of this article as it existed prior to 1984 are now contained in article 14 of this title.

(2) This article was numbered as article 13 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 8

Nongame, Endangered, or Threatened
Species Conservation

33-8-101 to 33-8-110. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor’s note: (1) The substantive provisions of this article as it existed prior to 1984 are now contained in article 2 of this title.

(2) This article was added in 1973. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ADMINISTRATION

ARTICLE 9

Administration of Parks and Wildlife

Cross references: For the legislative declaration in the 2011 act adding this article, see section 1 of chapter 293, Session Laws of Colorado 2011.

33-9-101.	Commission - creation - composition - terms - vacancies - removal - meetings - strategic plan - legislative declaration - repeal.	33-9-106.	Reports.
		33-9-107.	Reaffirmation of assent to federal Pittman-Robertson and Dingell-Johnson acts.
33-9-102.	Powers and duties of commission - rules.	33-9-108.	Transfer of functions - employees - property - records - rules - contracts - lawsuits - statutory references.
33-9-103.	Office of director of division created - duties.	33-9-109.	Funds - appropriations to former divisions in 2011 general appropriations act - repeal.
33-9-104.	Division - creation - duties.		
33-9-105.	Enterprise status of commission and division.		

33-9-101. Commission - creation - composition - terms - vacancies - removal - meetings - strategic plan - legislative declaration - repeal. (1) (a) Effective July 1, 2012, there is hereby created the parks and wildlife commission, also referred to in this article as the “commission”.

(b) (I) Effective July 1, 2012, the parks and wildlife board is abolished and the terms of members of that board serving as of that date are terminated.

- (II) This paragraph (b) is repealed, effective January 1, 2013.
- (2) The commission consists of thirteen members, as follows:
 - (a) Two members who are ex officio nonvoting members, as follows:
 - (I) The executive director; and
 - (II) The commissioner of the department of agriculture;
 - (b) Eleven voting members who are appointed, in accordance with subsection (3) of this section, by the governor with the consent of the senate.
 - (3) (a) The eleven voting members of the commission are as follows:
 - (I) Three members who are sports persons who can demonstrate a reasonable knowledge of wildlife issues and who have obtained a hunting or fishing license issued under this title for at least each of the three years prior to their appointments. One of the members appointed pursuant to this subparagraph (I) must be an outfitter registered pursuant to article 55.5 of title 12, C.R.S.
 - (II) Three members who are actively involved in production agriculture as owners or lessees of the agricultural property and owners or partial owners of the commodities produced on the land and who can demonstrate a reasonable knowledge of wildlife issues;
 - (III) Three members who can demonstrate that they regularly engage in outdoor recreation and utilize parks resources. One member appointed under this subparagraph (III) shall represent a nonprofit organization that supports and promotes the conservation and enhancement of Colorado's wildlife and habitat; recognizes and promotes primarily non-consumptive wildlife use; and has expertise in wildlife issues, wildlife habitat, or wildlife management; and
 - (IV) Two members appointed from the public at-large.
 - (b) (I) In appointing members to the commission under paragraph (a) of this subsection (3), the governor shall make appointments that ensure that a reasonable balance of the following areas of knowledge and experience, as they relate to parks and wildlife, are represented: Outdoor business, service as a current or former local elected official, youth outdoor education, wildlife biology or science, energy, conservation, beneficial uses of water, land conservation and conservation easements, and diversified trails interests and activities. In order to satisfy the requirements of this paragraph (b), the governor shall give preference to persons with experience or expertise in multiple areas of knowledge.
 - (II) Regardless of the particular interests or qualifications possessed by each member appointed to the commission pursuant to paragraph (a) of this subsection (3), each commissioner represents diverse parks, wildlife, and outdoor recreation throughout Colorado and is committed to the long-term financial stability and sustainability of the department.
 - (c) Of the voting members appointed to the commission, there shall not be a difference of more than one person between those members affiliated with any major political party.
 - (d) To the extent possible, voting members shall be appointed to the commission in a manner that ensures balanced geographical representation of diverse areas of the state. At least four voting members shall be appointed from west of the continental divide.
 - (e) (I) Except as provided in paragraph (f) of this subsection (3), terms of members serving pursuant to paragraph (b) of subsection (2) of this section are for four years.
 - (II) No member serving pursuant to paragraph (b) of subsection (2) of this section is permitted to serve more than two consecutive terms.
 - (f) (I) Initial appointments of voting members of the commission are as follows: Two members to serve until July 1, 2013; three members to serve until July 18, 2014; three members to serve until July 18, 2015; and three members to serve until July 18, 2016. All subsequent appointments are for terms of four years.
 - (II) In making initial appointments to the commission under subparagraph (I) of this paragraph (f), the governor may select persons serving on the former parks and wildlife board, as that board existed on June 30, 2012. However, a person so appointed is ineligible to serve any of the initial appointments that would result in extending for more than two years the date on which the person's parks and wildlife board term would have expired.
 - (4) The governor shall fill vacancies on the commission for any unexpired term, with the consent of the senate. The member appointed to fill a vacancy shall be from the same

category described in paragraph (a) of subsection (3) of this section as the member vacating the position.

(5) The governor is permitted to remove members of the commission only for cause.

(6) Six voting commissioners constitute a quorum for purposes of conducting the business of the commission.

(7) For purposes of mailing and service, the commission's principal office is in the office of the executive director.

(8) For each day actually engaged in the duties of the commission, the commission members are entitled to receive a per diem amount of fifty dollars, together with all actual and necessary travel expenses to be paid after the expenses are incurred. Mileage rates are as provided in section 24-9-104, C.R.S.

(9) The commission shall exercise its powers and perform its duties and functions under the department and the executive director of the department as if the same were transferred to the department by a **type 1** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(10) (a) (I) The initial meeting of the commission shall be convened by the executive director.

(II) At the first meeting, the commission shall:

(A) Elect a chair and vice-chair from the members serving pursuant to paragraph (b) of subsection (2) of this section, who shall serve in that capacity for a term of one year but who may be reelected for additional terms; and

(B) Designate two members to serve as representatives to the state board of the great outdoors Colorado trust fund established under article XXVII of the state constitution. One representative must be a commissioner with wildlife knowledge appointed pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section, and the other representative must be a commissioner with experience in outdoor recreation appointed pursuant to subparagraph (III) of paragraph (a) of subsection (3) of this section.

(b) The commission shall meet as often as necessary and may adopt policies and procedures necessary to carry out its duties. The commission shall conduct at least two meetings per calendar year at locations west of the continental divide.

(11) (a) In addition to discharging its regular duties and functions, the commission shall specifically discuss and formulate a five-year strategic plan to address ongoing or new issues resulting after, and identify increased efficiencies and cost savings that may be realized from, the 2011 merger of the former division of wildlife and the former division of parks and outdoor recreation into the division of parks and wildlife. The strategic plan must address how the merger has affected policies, objectives, strategies, and estimated annual fiscal costs and savings associated with the duties and programs of the division.

(b) The commission shall finalize the strategic plan required by this subsection (11) by December 31, 2013. In developing the strategic plan, the commission shall place special emphasis on obtaining meaningful statewide input.

(c) Notwithstanding section 24-1-136 (11), C.R.S., for every year included in the strategic plan, the commission shall submit a report annually to the house committee on agriculture, livestock, and natural resources and the senate committee on agriculture, natural resources, and energy, or any successor committees, regarding the progress and status of the strategic plan. In order to reduce costs associated with preparing and transmitting such reports, the commission is authorized to send the reports in an electronic format.

(12) (a) The general assembly hereby finds, determines, and declares that it is the policy of the state that:

(I) Colorado's wildlife, natural, scenic, and scientific resources must be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of the state and its visitors;

(II) Colorado's agriculture plays a vital role in providing the state's wildlife, natural, scenic, and scientific resources the habitat and conditions that allow these resources to thrive;

(III) A comprehensive program designed to offer the greatest possible variety of recreational opportunity to the people of the state and its visitors is provided;

(IV) There must be a continuous operation of planning, acquisition, development, and management of wildlife habitats, state parks, outdoor recreation lands, trails, waters, and facilities in a manner that recognizes the private property rights of individual property owners; and

(V) Both education and outreach activities must be used to promote natural resources stewardship.

(b) The general assembly further finds and declares that the mission of the commission and the division is to perpetuate the wildlife resources of the state, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1371, § 2, effective July 1 (see editor's note). **L. 2012:** Entire section R&RE, (HB 12-1317), ch. 248, p. 1198, § 1, effective June 4.

Editor's note: Section 29 of chapter 293, Session Laws of Colorado 2011, provides that the act adding subsection (10)(a) takes effect on June 6, 2011.

33-9-102. Powers and duties of commission - rules. (1) The commission is vested with all the powers, responsibilities, obligations, functions, and duties that previously were under the jurisdiction of the former wildlife commission or the former board of parks and outdoor recreation as of June 30, 2011.

(2) In addition to any other specific grant of rule-making authority, the commission may adopt or revise any rules, in accordance with article 4 of title 24, C.R.S., that the commission deems necessary or convenient to effect the purposes of, and fulfill its duties under, this title.

(3) The commission shall designate a commission member with wildlife knowledge appointed pursuant to section 33-9-101 (3) (a) (I) to serve as a representative to the state board of the great outdoors Colorado trust fund established under article XXVII of the state constitution. The commission shall designate a commission member with parks and outdoor recreation knowledge appointed pursuant to section 33-9-101 (3) (a) (III) to serve as a representative to the state board of the great outdoors Colorado trust fund established under article XXVII of the state constitution.

(4) (a) Except as provided in paragraph (b) of this subsection (4), in promulgating a rule to increase or decrease a park fee or charge under articles 10 to 32 of this title, the commission shall consider the effect that the change in the fee or charge would have on park usage, the demand for the service for which the fee or charge is used, and opportunities to implement differential pricing.

(b) The commission may raise or lower park fees and charges described in paragraph (a) of this subsection (4) if the commission reasonably anticipates that the total annual revenues realized from such fees and charges will not increase by more than twenty percent over the annual amount earned from fees and charges as they existed on July 1, 2011.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1376, § 2, effective July 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1210, § 23, effective June 4.

33-9-103. Office of director of division created - duties. (1) (a) The office of director of the division is hereby created. The commission, with the consent of the executive director, shall appoint the director. The director shall devote his or her entire time to the service of the state in the discharge of his or her official duties and shall not hold any other public office. The appointment or removal of the director is subject to section 13 of article XII of the state constitution. The director shall possess such qualifications as may be established by the commission, the executive director, and the state personnel director.

(b) (Deleted by amendment, L. 2012.)

(2) The director shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested previously in the director of the division of wildlife and the director of the division of parks and outdoor recreation, including those duties described under sections 33-1-110 and 33-10-109.

(3) The director shall exercise all the powers and perform all the functions of the commission in the interim between its meetings, subject to the ratification of the commission. The director shall act as recording secretary for the commission and is the custodian of all minutes and other records of the commission. The director shall perform such duties as prescribed by the commission, by the executive director, or by law; except that the director has no authority to promulgate rules.

Source: **L. 2011:** Entire article added, (SB 11-208), ch. 293, p. 1376, § 2, effective July 1 (see editor's note). **L. 2012:** (1) and (3) amended, (HB 12-1317), ch. 248, p. 1210, § 24, effective June 4.

Editor's note: Section 29 of chapter 293, Session Laws of Colorado 2011, provides that the act adding this section takes effect on June 6, 2011.

33-9-104. Division - creation - duties. (1) There is hereby created a division of parks and wildlife in the department of natural resources, also referred to in this article as the "division". The division is under the jurisdiction of the commission.

(2) The division shall exercise its powers and perform its duties and functions specified in this title under the department of natural resources and the executive director thereof as if the same were transferred to the department by a **type 1** transfer as defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. The division has all the powers, duties, obligations, and functions previously exercised by the division of wildlife or the division of parks and outdoor recreation, as those divisions existed on June 30, 2011.

Source: **L. 2011:** Entire article added, (SB 11-208), ch. 293, p. 1377, § 2, effective July 1. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1211, § 25, effective June 4.

33-9-105. Enterprise status of commission and division. (1) The division and the commission constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the commission retains the authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as they constitute an enterprise pursuant to this section, the division and the commission are not subject to any of the provisions of section 20 of article X of the state constitution.

(2) The enterprise created pursuant to this section has all the powers and duties of the commission and the division as authorized under this title.

(3) Nothing in this section limits or restricts the authority of the division to expend its revenues consistent with this title.

Source: **L. 2011:** Entire article added, (SB 11-208), ch. 293, p. 1377, § 2, effective July 1. **L. 2012:** (1) and (2) amended, (HB 12-1317), ch. 248, p. 1211, § 26, effective June 4.

33-9-106. Reports.

(1) (Deleted by amendment, L. 2012.)

(2) Beginning in 2013 and notwithstanding section 24-1-136 (11), C.R.S., the executive director shall report annually to the joint house agriculture, livestock, and natural resources committee and the senate agriculture, natural resources, and energy committee, or any successor committees, regarding the administration of the division, including an evaluation of division resources and their utilization and an identification of opportunities for efficiencies. Each such report must summarize stakeholder outreach conducted during the prior

year and must also identify disposition of assets and cost savings, both planned and realized, since the previous year, including savings pertaining to personnel, equipment, services, and provisioning.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1378, § 2, effective July 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1211, § 27, effective June 4.

33-9-107. Reaffirmation of assent to federal Pittman-Robertson and Dingell-Johnson acts. Nothing in this article alters or affects the state's assent to the federal acts described in sections 33-1-117 and 33-1-118, which assent prohibits diversion of license fees paid by hunters and sport fishermen to purposes other than administration of the fish and wildlife agency.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1378, § 2, effective July 1.

33-9-108. Transfer of functions - employees - property - records - rules - contracts - lawsuits - statutory references. (1) (a) The commission shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested previously in the former wildlife commission or the former board of parks and outdoor recreation.

(b) (I) The division shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested previously in the division of wildlife or the division of parks and outdoor recreation.

(II) The director shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested previously in the director of the division of wildlife or the director of the division of parks and outdoor recreation.

(2) (a) All positions of employment in the wildlife commission and the board of parks and outdoor recreation concerning the powers, duties, and functions transferred to the parks and wildlife commission pursuant to this article and determined to be necessary to carry out the purposes of this title by the parks and wildlife commission are transferred to the commission and are employment positions therein. All such employees are employees of the commission for purposes of section 24-50-124, C.R.S., and retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed continuous.

(b) All positions of employment in the division of wildlife and the division of parks and outdoor recreation concerning the powers, duties, and functions transferred to the division of parks and wildlife pursuant to this article and determined to be necessary to carry out the purposes of this title by the director are transferred to the division and are employment positions therein. All such employees are employees of the division for purposes of section 24-50-124, C.R.S., and retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed continuous.

(3) (a) All items of property, real and personal, including office furniture and fixtures, books, documents, and records of the wildlife commission or the board of parks and outdoor recreation are transferred to the parks and wildlife commission and become the property thereof.

(b) All items of property, real and personal, including office furniture and fixtures, books, documents, and records of the division of wildlife or the division of parks and outdoor recreation are transferred to the division of parks and wildlife and become the property thereof.

(c) All personal and real property acquired in whole or in part with license fees or federal grant funds is subject to accountability and control by the division to assure that the property serves the purpose for which it was originally acquired throughout its useful life.

(4) (a) Whenever the wildlife commission or the board of parks and outdoor recreation is referred to or designated by any contract or other document, the reference or designation applies to the parks and wildlife commission. All contracts entered into by the wildlife

commission or the board of parks and outdoor recreation prior to June 30, 2011, are hereby validated, with the commission succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the commission for the payment of such obligations.

(b) Whenever the division of wildlife or the division of parks and outdoor recreation is referred to or designated by any contract or other document, the reference or designation applies to the division of parks and wildlife. All contracts entered into by the former divisions prior to June 30, 2011, are hereby validated, with the division succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts are transferred and appropriated to the division for the payment of such obligations.

(5) (a) Unless otherwise specified:

(I) Whenever any law refers to the wildlife commission, the board of parks and outdoor recreation, or the parks and wildlife board, that law shall be construed as referring to the parks and wildlife commission; and

(II) Whenever any law refers to the division of wildlife or the division of parks and outdoor recreation, that law shall be construed as referring to the division of parks and wildlife.

(b) The revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the wildlife commission, the board of parks and outdoor recreation, or the parks and wildlife board from such references to the parks and wildlife commission, as appropriate. The revisor of statutes is also authorized to change all references in the Colorado Revised Statutes to the division of wildlife or the division of parks and outdoor recreation from such references to the division of parks and wildlife, as appropriate. In connection with this authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to this article.

(6) All rules and orders of the wildlife commission or the board of parks and outdoor recreation continue to be effective and shall be enforced by the commission until superseded, revised, amended, repealed, or nullified pursuant to law. The commission shall adopt any rules necessary for the administration of the division and as otherwise authorized by this title.

(7) All commissioned peace officers of the division of parks and wildlife have all the powers, duties, functions, special protections, and responsibilities that such officers exercised or enjoyed under the division of wildlife or the division of parks and outdoor recreation.

(8) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against the wildlife commission, the board of parks and outdoor recreation, the parks and wildlife board, the division of wildlife, or the division of parks and outdoor recreation, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties, is abated by reason of the transfer of duties and functions to the parks and wildlife commission or the division under this article.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1378, § 2, effective July 1. **L. 2012:** (1)(a), (2)(a), (3)(a), (4)(a), (5), (6), and (8) amended, (HB 12-1317), ch. 248, p. 1212, § 28, effective June 4.

33-9-109. Funds - appropriations to former divisions in 2011 general appropriations act - repeal. (1) Nothing in this article alters or affects funds previously administered by the former wildlife commission or the former board of parks and outdoor recreation; except that the parks and wildlife commission shall administer such funds.

(2) The commission shall adopt policies, procedures, or accounting methods to ensure transparency and prevent the unauthorized commingling or impermissible use of moneys in distinct funds, to ensure that moneys are expended consistent with the purposes for which

they are received, collected, or appropriated, and to ensure that appropriate records are maintained for audit purposes.

(3) (a) The commission shall segregate all moneys received pursuant to section 3 (1) (b) (II) of article XXVII of the state constitution from all other moneys and shall spend these moneys solely for development and improvement of new and existing state parks, recreation areas, and recreational trails.

(b) The commission shall segregate all moneys received pursuant to section 5 (1) (a) (I) of article XXVII of the state constitution and spend these moneys solely for investments in the wildlife resources of Colorado, including the protection and restoration of crucial wildlife habitats, appropriate programs for maintaining Colorado's diverse wildlife heritage, wildlife watching, and educational programs about wildlife and wildlife environment, consistent with the purposes set forth under section 1 (1) (a) of article XXVII.

(c) The commission shall segregate all moneys received pursuant to section 5 (1) (a) (II) of article XXVII of the state constitution and spend these moneys solely for investments in the outdoor recreation resources of Colorado, including the state parks system, trails, public information and environmental education resources, and water for recreational facilities, consistent with the purposes set forth under section 1 (1) (a) of article XXVII.

(4) (a) The state controller shall allow the division to expend appropriations to the former division of wildlife and the former division of parks and outdoor recreation contained in the 2011 general appropriations act, Senate Bill 11-209, as enacted in 2011. The division shall administer and expend the appropriations consistent with the purposes for which the appropriations were made.

(b) This subsection (4) is repealed, effective July 1, 2013.

Source: L. 2011: Entire article added, (SB 11-208), ch. 293, p. 1381, § 2, effective July 1. **L. 2012:** (1), (2), and (3) amended, (HB 12-1317), ch. 248, p. 1213, § 29, effective June 4.

PARKS

ARTICLE 10

Parks - General Provisions

Editor's note: (1) Section 33-10-102 (5) provides that the term "division" as used in articles 10 to 15 of this title means the division of parks and outdoor recreation.

(2) This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 30 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

33-10-101.	Legislative declaration.	33-10-110.	Expenses of employees.
33-10-102.	Definitions.	33-10-111.	Parks and outdoor recreation cash fund created - fees - accounting expenditures for roads and highways - repeal.
33-10-103.	Division and board created. (Repealed)		
33-10-104.	Board composition - jurisdiction. (Repealed)		
33-10-105.	Board regions. (Repealed)	33-10-111.5.	Parks and outdoor recreation emergency reserve cash fund - stores revolving fund - created.
33-10-106.	Duties of the commission - rules.		
33-10-107.	Powers of commission - rules - definitions.	33-10-112.	Federal aid projects income fund.
33-10-108.	Duties of the division of parks and wildlife - definitions.	33-10-113.	Designation of agency.
		33-10-114.	Limitation on division and commission authority.
33-10-108.5.	Interpretive and educational services - agreements with nonprofit groups - definitions.	33-10-115.	Use of parks and recreational areas by nonprofit search and rescue organizations - definitions - rules.
33-10-109.	Powers and duties of director.		

33-10-101. Legislative declaration. (1) It is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state. It is further declared to be the policy of this state that there shall be provided a comprehensive program of outdoor recreation in order to offer the greatest possible variety of outdoor recreational opportunities to the people of this state and its visitors and that to carry out such program and policy there shall be a continuous operation of acquisition, development, and management of outdoor recreation lands, waters, and facilities.

(2) In implementing the policy set forth in subsection (1) of this section, the state shall:

(a) Develop state parks and state recreation areas suitable for such recreational activities as camping, picnicking, hiking, horseback riding, environmental education, sightseeing, hunting, boating, fishing, swimming, and other water sports, and other recreational activities;

(b) Advise the citizens of this state and visitors of the location of state parks and recreation areas through the distribution of Colorado state park and recreation area guides and the use of other appropriate informational devices;

(c) Not be responsible for development of neighborhood parks or recreation areas that are mainly designed to provide facilities for team or individual sports;

(d) Charge a fee for required passes or permits for the use of any state park or state recreation area where appropriate supervision and maintenance is required and when certain facilities, as determined by the parks and wildlife commission, are maintained at any such area;

(e) Allow sport hunting, trapping, and fishing as a wildlife management tool and as the primary method of effecting a necessary wildlife management on lands under the control of the division of parks and wildlife.

Source: L. 84: Entire article added, p. 878, § 2, effective January 1, 1985. L. 2012: (2)(d) amended, (HB 12-1317), ch. 248, p. 1214, § 30, effective June 4.

33-10-102. Definitions. As used in articles 10 to 15 of this title, unless the context otherwise requires:

(1) Repealed.

(2) "Camping" means the erecting of a tent or shelter of natural or manmade material, the placing of a sleeping bag or other bedding material on the ground, the parking of a motor vehicle, motor home, or traveler, or the mooring of a vessel for the apparent purpose of overnight occupancy.

(3) to (6) Repealed.

(7) "Fishing" shall have the same meaning as that specified in section 33-1-102.

(8) "Hours", unless otherwise stated, means the hours of the day or night when recreational activities shall take place on land and water under the control of the division.

(9) Repealed.

(10) "Littering" means the indiscriminate depositing of trash, garbage, or other waste on public or private lands or waters of this state.

(11) and (12) Repealed.

(13) "Outdoor recreation" means any activity conducted in an outdoor environment by persons, such as hiking, camping, boating, fishing, hunting, and the like.

(14) "Outdoor recreation resources" means the land and water areas which provide or may in the future provide opportunities for outdoor recreation.

(15) "Parks and recreation officer" or "special parks and recreation officer" means a person who is appointed by the director and authorized to enforce the park laws and the rules of the commission and who shall cooperate with the division in the enforcement of the wildlife laws and rules.

(16) "Pass" or "registration" means a document issued by the division authorizing the use of land and water under the control of the division or the use of vessels or snowmobiles within this state. The term "pass" shall include a permit or card, and the term "registration" shall include decals issued by the division.

(17) "Peace officer" means a sheriff, undersheriff, deputy sheriff, police officer, Colorado state patrol officer, or town marshal; a district attorney, assistant district attorney, deputy district attorney, or special deputy district attorney; an authorized investigator of a district attorney; an agent of the Colorado bureau of investigation; a Colorado wildlife officer or special wildlife officer; or a parks and recreation officer. A parks and recreation officer has the powers of a peace officer as set forth in sections 16-2.5-101 and 16-2.5-117, C.R.S., and has the authority to enforce the laws of the state of Colorado while in the performance of his duties.

(18) "Permit" means a document issued pursuant to commission rule and includes such documents as campground permits, electrical hookup permits, group picnic area permits, and other permits as authorized by the commission.

(19) "Person" means any individual, association, partnership, or public or private corporation, any municipal corporation, county, city, city and county, or other political subdivision of the state, or any other public or private organization of any character.

(20) "Public road" means the traveled portion and the shoulders on each side of any road maintained for public travel by a county, city, or city and county, the state, or the United States government and includes all structures within the limits of the right-of-way of any such road.

(21) "Resident" means any person who has been domiciled in this state for six consecutive months or more immediately preceding the date of application for or purchase of any registration or aspen leaf passport under articles 10 to 15 of this title or the rules of the commission, who resides in this state with the genuine intent of making this state his or her place of permanent abode, and who, when absent, intends to return to this state. A person who is a resident of this state does not terminate residency upon entering the armed services of the United States. A member of the armed services domiciled in Colorado at the time he or she entered military service is presumed to retain his or her status as a domiciliary of Colorado throughout his stay in the service, regardless of where he or she may be assigned to duty or for how long. For the purposes of this subsection (21), the following are deemed residents of this state:

(a) Members of the armed services of the United States or any nation allied with the United States who are on active duty in this state under permanent orders and their spouses and dependent children;

(b) Personnel in the diplomatic service of any nation recognized by the United States who are assigned to duty in this state;

(c) Students who are enrolled in and have been attending any school, college, or university in this state for at least six months immediately prior to the date of application for any registration. Students who are temporarily absent from this state while still enrolled at any such school, college, or university shall be deemed residents for the purposes of this subsection (21).

(22) "Sell" includes offering or possessing for sale, bartering, exchanging, or trading.

(23) "State park" means a relatively spacious fee title area having outstanding scenic and natural qualities and often containing significant archaeological, ecological, geological, and other scientific values so as to make imperative the preservation of the area by the division for the enjoyment, education, and inspiration of residents and visitors.

(24) "State recreation area" means a relatively spacious and scenically attractive land and water area under the control of the division offering a broad range of outdoor recreational opportunities. A relatively spacious water body with limited land area under the control of the division may be classified as a state recreation area if it offers a full range of water-based recreational activities such as boating, water skiing, hunting, trapping, fishing, and swimming and has sufficient adjacent land acreage for the associated camping and picnicking. A relatively spacious land area without a significant water body may be classified as a state recreation area if it offers a full range of land-based recreational activities such as camping, picnicking, bicycling, hiking, horseback riding, environmental education, target shooting, hunting, trapping, and motorized recreation.

(25) "Transfer" means to pass, deliver, convey, or hand over from one person to another.

(26) "Trapping" shall have the same meaning as that specified in section 33-1-102.

(27) "Vessel" means every description of watercraft used or capable of being used as a means of transportation of persons and property on the water, other than single-chambered, air-inflated devices or seaplanes.

(28) "Waters of the state" means any natural streams, reservoirs, and lakes within the territorial limits of the state of Colorado.

(29) "Wildlife" shall have the same meaning as that specified in section 33-1-102.

Source: **L. 84:** Entire article added, p. 879, § 2, effective January 1, 1985. **L. 86:** (17) amended, p. 775, § 4, effective July 1. **L. 2003:** (17) amended, p. 1629, § 65, effective August 6. **L. 2011:** (1), (4), and (5) amended, (SB 11-208), ch. 293, p. 1387, § 9, effective July 1. **L. 2012:** (1), (3) to (6), (9), (11), and (12) repealed and (15), (18), and IP(21) amended, (HB 12-1317), ch. 248, p. 1214, § 31, effective June 4.

Editor's note: This section is similar to former § 33-30-102 as it existed prior to 1984.

33-10-103. Division and board created. (Repealed)

Source: **L. 84:** Entire article added, p. 881, § 2, effective January 1, 1985. **L. 95:** (2) amended, p. 965, § 1, effective July 1. **L. 2011:** Entire section repealed, (SB 11-208), ch. 293, p. 1387, § 10, effective July 1.

Editor's note: This section was similar to former § 33-30-101 as it existed prior to 1984.

33-10-104. Board composition - jurisdiction. (Repealed)

Source: **L. 84:** Entire article added, p. 881, § 2, effective January 1, 1985. **L. 95:** (2) amended, p. 338, § 1, effective July 1. **L. 2011:** Entire section repealed, (SB 11-208), ch. 293, p. 1388, § 11, effective July 1.

Editor's note: This section was similar to former § 33-30-103 as it existed prior to 1984.

33-10-105. Board regions. (Repealed)

Source: **L. 84:** Entire article added, p. 882, § 2, effective January 1, 1985. **L. 2011:** Entire section repealed, (SB 11-208), ch. 293, p. 1388, § 12, effective July 1.

33-10-106. Duties of the commission - rules. (1) The commission shall:

(a) Promulgate rules and orders relating to parks and outdoor recreation programs which are necessary to carry out the purposes of articles 10 to 15 and 32 of this title;

(b) Administer the provisions of articles 10 to 15 and 32 of this title through the division and control, manage, develop, and maintain all state parks and state recreation areas, consistent with the state policy as set forth in section 33-10-101;

(c) Establish parks and outdoor recreation uses for the areas, lakes, properties, and facilities under its control or which may be acquired or come under its control or supervision after July 1, 1972, where such areas, lakes, properties, or facilities are suitable for such uses;

(d) Relate the parks and outdoor recreation programs to the populations and economies of the regions to be served and attempt to acquire pursuant to legislative authorization suitable lands for parks and outdoor recreation before their price has placed them beyond the means of the public treasury;

(e) Through the division, enforce the laws and rules relating to parks and outdoor recreation areas;

(f) Assure maximum development and protection of wildlife habitat consistent with park and outdoor recreation operations and provide full opportunity for the hunter and

fisherman to harvest the surplus wildlife resources on all state park and outdoor recreation areas whenever public safety can be maintained;

(g) Review dollar amount certifications submitted to it by eligible counties pursuant to part 3 of article 25 of title 30, C.R.S., determine the amounts to be certified to the general assembly, and certify said amounts pursuant to part 3 of article 25 of title 30, C.R.S.;

(h) Select areas in proximity to lakes, streams, or reservoirs to be studied by the division for purposes of determining their suitability for the establishment of trails under article 11 of this title;

(i) Designate trails to be part of the Colorado greenway trails system based on recommendations of the division pursuant to section 33-10-108 (1) (h);

(j) (I) Promulgate rules as necessary to implement section 33-10-108.5, including, without limitation:

(A) Procedures for entering into contracts or agreements for interpretive or educational services;

(B) If a contract or agreement calls for the provision of interpretive or educational materials by a private organization, guidelines for approval of the interpretive or educational materials, including both printed matter and the content of any lecture, guided tour, audiovisual program, or other presentation, to ensure that factual representations are scientifically valid and objectively supported and that, where there is more than one responsible viewpoint on an issue, all such responsible viewpoints are presented in a balanced manner; and

(C) Procedures for renewal and dissolution of contracts or agreements for interpretive or educational services.

(II) In adopting rules pursuant to this paragraph (j), the commission shall consult with the director and personnel of the division and shall not initiate any special or additional rule-making hearings outside the commission's normal rule-making schedule. The intent of this subparagraph (II) is to allow the commission and the division to implement section 33-10-108.5 within existing appropriations.

(III) Whenever the commission negotiates a contract or agreement affecting a specific state park, natural area, or facility, the commission shall promptly give written notice to the staff assigned to that park, area, or facility.

(2) The commission shall adopt such rules as may be reasonably necessary for the administration, protection, and maintenance of all state parks and recreation areas under the direct control of the division. Specifically, the commission has the power to adopt rules for such areas on the following matters:

(a) Preservation of property, vegetation, wildlife, signs, markers, or buildings or other structures, and any object of scientific value or interest;

(b) Restriction or limitation of the use of any such area either as to time, manner, or permitted activities;

(c) Prohibition of activities or conduct which may be reasonably expected to substantially interfere with the use and enjoyment of such areas by the general public or which may constitute a general nuisance;

(d) Necessary sanitation, health, and safety measures;

(e) Camping and picnicking, including the place, time, and manner in which such activities are permitted;

(f) Use of motor vehicles and vessels, as to place, time, and manner of operation;

(g) Control and limitation of fires and designation of places where fires are permitted;

(h) Requirements essential for the proper management of state parks and outdoor recreation functions and uses.

(3) Rules that apply to any particular area under the control of the division shall be prominently posted at such area, and general parks and outdoor recreation rules applying to all state parks and recreation areas shall be prominently posted at all public entrances to any such areas and at such other places as the division deems necessary. Permission to enter and use any state park or recreation area under the control of the division shall be conditioned upon compliance with the rules governing any such area, and any person who violates such rules may be cited for violations thereof, or required to leave the area for a twenty-four-hour

period by division personnel or by other persons specifically authorized to enforce such rules by the division, or both.

(4) (a) Rule-making procedures are as prescribed in article 4 of title 24, C.R.S., except as otherwise provided in articles 10 to 15 and 32 of this title. Notice of rules may also be given other publicity as the commission may deem desirable.

(b) A certified copy, which may be certified by the director or the director's designee, of any rule or order of the commission constitutes prima facie evidence in any court of this state. A printed copy of any rule purporting or proved to have been adopted and published by the authority of the commission or as published in the code of Colorado regulations in accordance with section 24-4-103, C.R.S., is presumptive evidence of such rule and its adoption.

(c) All rules and orders of the commission, lawfully adopted and in force on December 31, 1984, continue to be effective until revised, amended, repealed, or nullified, or until they have expired, pursuant to law.

Source: **L. 84:** Entire article added, p. 882, § 2, effective January 1, 1985. **L. 90:** (1)(h) and (1)(i) added, p. 1534, § 5, effective May 29. **L. 95:** (1)(a), (1)(b), (3), and (4)(a) amended, p. 965, § 2, effective July 1. **L. 2005:** (1)(j) added, p. 29, § 2, effective March 11. **L. 2006:** (1)(j)(II) amended, p. 1507, § 54, effective June 1. **L. 2011:** (1)(e) and (1)(f) amended, (SB 11-208), ch. 293, p. 1391, § 17, effective July 1. **L. 2012:** IP(1), (1)(j)(II), (1)(j)(III), IP(2), and (4) amended, (HB 12-1317), ch. 248, p. 1215, § 32, effective June 4.

Editor's note: This section is similar to former § 33-30-104 as it existed prior to 1984.

33-10-107. Powers of commission - rules - definitions. (1) The commission has power to:

(a) Acquire by gift, transfer, lease, purchase, or long-term operating agreement such land and water, or interests in land and water, as the director, with the approval of the executive director, deems necessary, suitable, or proper for parks and outdoor recreation purposes or for the preservation or conservation of sites, scenes, open space, and vistas of public interest. As used in this section, "interest in land and water" means any and all rights and interest in land less than the full fee interest, including future interests, easements, covenants, and contractual rights. Every interest in land and water held by the commission when properly recorded runs with the land or water to which it pertains for the benefit of the citizens of this state and may be protected and enforced by the commission in the district court of the county in which the land or water, or any portion thereof, is located.

(b) Lease, exchange, or sell any property, water rights, land, or interest in land or water rights, including oil, gas, and other organic and inorganic substances which now are or may become surplus or which, in the proper management of the division, the commission desires to lease, exchange, or sell. All sales of property, water rights, or lands shall be at public sale, and the commission has the right to reject any or all bids. As used in this paragraph (b), "exchange" means the transferring of property, water rights, land, or interest in land or water rights to another person in consideration for the transfer to the commission of other property, water rights, land, or interest in land or water rights, or cash, or any combination thereof; except that any cash received may not exceed fifty percent of the total value of the consideration. A transaction otherwise qualifying as an exchange is not deemed a sale merely because dollar values have been assigned to any property, water rights, land, or interest in land or water rights, for the purpose of ensuring that the commission will receive adequate compensation.

(c) Construct, lease, or otherwise establish public parks or outdoor recreational facilities and conveniences at any site or on any land controlled by the commission or in which it holds an interest, operate and maintain any such lands, facilities, and conveniences, and provide services with respect thereto, and, when appropriate, make reasonable charges for their use or enter into contracts for their maintenance or operation;

(d) Enter into cooperative agreements with state and other agencies, educational institutions, municipalities, political subdivisions, corporations, clubs, landowners, associa-

tions, and individuals for the development and promotion of parks and outdoor recreation programs;

(e) Receive and expend grants, gifts, and bequests, including federal funds, made available for the purposes for which the commission is authorized. The commission may provide matching funds whenever funds are available on such a basis. The commission shall provide such information as may be required in order to secure such funds. The receipt and expenditure of money so received shall be reported to the executive director prior to the time of submission of the commission's annual budget requests.

(f) Contract with the political subdivisions of the state for development, operation, and maintenance of parks and outdoor recreation areas owned by any such political subdivision, but any such contract need not transfer possession or right of possession from said political subdivision;

(g) Encourage the organization of public parks and outdoor recreational activities in political subdivisions of the state;

(h) Establish by rules pursuant to section 33-10-111 (5) the amounts of fees for certificates, permits, licenses, and passes and any other special charges in order to provide for cash revenues necessary for the continuous operation of the state park and recreation system, subject to section 33-10-115; except that no such fees shall be used for capital construction other than controlled maintenance activities. Except as provided in section 33-10-111 (1), fees and charges collected pursuant to this paragraph (h) shall be credited to the division of parks and outdoor recreation cash fund.

(2) In the event that the commission plans to acquire the fee title to any real property at a cost that exceeds one hundred thousand dollars or to acquire an easement for a period that exceeds twenty-five years or at a cost that exceeds one hundred thousand dollars or to enter into any lease agreement for the use of real property for a period that exceeds twenty-five years or at a cost that exceeds one hundred thousand dollars, or to sell or otherwise dispose of such property, after the commission has approved of the transaction but before it has completed the transaction, the commission shall submit a report to the capital development committee that outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations that may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state that will result from the acquisition. The capital development committee shall review the reports submitted by the commission and make recommendations to the commission concerning the proposed land transaction within thirty days from the day on which the report is received. The commission shall not complete the transaction without considering the recommendations of the capital development committee, if the recommendations are made in a timely manner.

Source: **L. 84:** Entire article added, p. 884, § 2, effective January 1, 1985. **L. 85:** (1)(h) added, p. 659, § 1, effective January 1, 1986. **L. 90:** (1)(b) amended and (2) added, p. 1284, § 4, effective April 3. **L. 96:** (1)(h) amended, p. 779, § 3, effective May 23. **L. 2009:** (1)(h) amended, (SB 09-182), ch. 148, p. 616, § 1, effective April 20; (2) amended, (HB 09-1168), ch. 83, p. 306, § 2, effective August 5. **L. 2012:** IP(1), (1)(a), (1)(b), (1)(c), (1)(e), and (2) amended, (HB 12-1317), ch. 248, p. 1216, § 33, effective June 4.

Editor's note: This section is similar to former § 33-30-105 as it existed prior to 1984.

ANNOTATION

Law reviews. For article, "Protecting Open Space and Wildlife Habitat Under Colorado Law", see 24 Colo. Law. 2729 (1995).

33-10-108. Duties of the division of parks and wildlife - definitions. (1) The division, unless otherwise provided by law, has the following duties:

(a) To enter into contracts and agreements with the United States or any appropriate

agency thereof for purposes authorized under the federal "Land and Water Conservation Fund Act of 1965", as amended, and to keep financial and other records relating thereto;

(a.5) To enter into contracts and agreements with private organizations for purposes authorized under section 33-10-108.5 and to keep financial and other records relating thereto;

(b) To furnish such reports and information as may be reasonably necessary to enable appropriate officials and agencies of the United States to perform their duties under the federal "Land and Water Conservation Fund Act of 1965", as amended;

(c) To prepare, maintain, and keep up to date a comprehensive plan for the development of the outdoor recreation resources of this state;

(d) To receive and disburse federal moneys to carry out the purposes of a comprehensive statewide outdoor recreation plan, but, of such allocation, not more than seventy-five percent, exclusive of administrative costs, shall be retained for development of the state-operated facilities by the division. In the event that requests on behalf of any county, city, or other political subdivision do not fully utilize the federal aid funds available, the state may use such funds.

(e) To undertake projects for the development of the state resources for outdoor recreation, but areas acquired or developed pursuant to any program participated in by this state under the authority of this section or section 33-10-114 shall be publicly maintained and operated for outdoor recreational purposes by the division;

(f) To enter into and administer agreements with the United States, or any appropriate agency thereof, for the planning, acquisition, and development of projects involving participating federal aid funds on behalf of any county, city, or other political subdivision if such county, city, or other political subdivision gives necessary assurances to the division that it has available sufficient funds to meet its share of the cost of the project and that the acquired or developed areas will be operated and maintained in perpetuity at its expense for public outdoor recreation use. Funds distributed to a city, county, or any other political subdivision pursuant to this section and not utilized shall, pursuant to rules adopted by the commission, revert to the division for its use. Any administrative costs assessed by the division to any county, city, or other political subdivision for local projects shall be for actual administrative costs incurred by the division, not to exceed five percent of federal aid funds distributed to such political subdivision.

(g) To provide technical assistance and information to counties, cities, or other political subdivisions of the state for local planning, financing, construction, operation, and maintenance of recreational trails, including trails along lakes, streams, or reservoirs, in accordance with article 11 of this title;

(h) To study the availability of areas selected by the commission pursuant to section 33-10-106 (1) (h) for the establishment of trails under article 11 of this title and to recommend trails to be included in the Colorado greenway trails system.

(2) Pursuant to a contract or agreement with an organization authorized by section 33-10-108.5, the division may provide personnel services to help the organization carry out its interpretive or educational program and provide space at or within any state park, natural area, or facility, as defined in said section, for interpretive or educational materials provided by the organization.

(3) (a) Pursuant to a contract, intergovernmental agreement, or memorandum of understanding, the division may allow fire mitigation personnel and accompanying equipment and material under the control or supervision of a fire department to enter state parks, state recreation areas, and natural areas for the purpose of mitigating forest land or wildland fires in or around such parks, recreation areas, and natural areas. Permissible activities to be undertaken by a fire department under this paragraph (a) include, without limitation, prescribed burning as a component of wildfire mitigation or forest or wildland management and exercises to promote the training of firefighting personnel.

(b) As used in this subsection (3):

(I) "Fire department" shall have the same meaning as set forth in section 29-20-105.5

(2) (a), C.R.S.

(II) "Natural area" shall have the same meaning as set forth in section 33-33-103 (8).

Source: **L. 84:** Entire article added, p. 885, § 2, effective January 1, 1985. **L. 90:** (1)(g) and (1)(h) added, p. 1534, § 6, effective May 29. **L. 2005:** (1)(a.5) and (2) added, p. 30, §§ 3, 4, effective March 11. **L. 2009:** (3) added, (HB 09-1162), ch. 191, p. 836, § 2, effective August 5. **L. 2012:** (1)(f) and (1)(h) amended, (HB 12-1317), ch. 248, p. 1217, § 34, effective June 4.

Cross references: For the “Land and Water Conservation Fund Act of 1965”, see Pub.L. 88-578, codified at 16 U.S.C. secs. 460d and 460l-4 to 460l-11.

33-10-108.5. Interpretive and educational services - agreements with nonprofit groups - definitions. (1) To provide interpretive or educational services at state parks, natural areas, and facilities, the division may enter into a contract or agreement with any private nonprofit, scientific, historic, volunteer, or educational organization organized primarily for the purpose of providing interpretive or educational services at such parks, natural areas, and facilities. An eligible organization may include, but is not limited to, a group designated as “friends of” an identified state park or area.

(2) In accordance with a contract or agreement under this section, an organization may:

(a) Offer interpretive or educational materials for sale at the state park, natural area, or facility for which the organization provides services under the terms of the contract. Net proceeds received from sales under this paragraph (a) shall be used to provide interpretive or educational services at the state park, natural area, or facility.

(b) Acquire display materials and equipment for exhibit at the state park, natural area, or facility for which the organization provides services under the terms of the contract;

(c) Support special state park, natural area, or facility interpretive or educational programs and other interpretive projects related to a specific park, natural area, or facility; or

(d) Support state park, natural area, or facility resource centers.

(3) As used in this section, “state parks, natural areas, and facilities” means:

(a) State parks;

(b) State recreation areas;

(c) Natural areas, as defined in section 33-33-103 (8); and

(d) Any state-owned facility related to or adjoining a park or area listed in paragraphs (a) to (c) of this subsection (3), whether indoor or outdoor, and including the department’s management offices and other buildings.

Source: **L. 2005:** Entire section added, p. 28, § 1, effective March 11.

33-10-109. Powers and duties of director. (1) It is the duty of the director to:

(a) Appoint such personnel, subject to the provisions of section 13 of article XII of the state constitution, as are necessary for the efficient operation of the division, including such personnel designated as parks and recreation officers. An employee of the division may be certified as a parks and recreation officer by the issuance of a parks and recreation officer law enforcement card. The commission card, signed by the director, shall evidence that such parks and recreation officer has satisfied the certification requirements established by the division, including basic certification from the peace officers standards and training board. Certified parks and recreation officers shall have the power to enforce the provisions of articles 10 to 15 and 32 of this title relating to parks and outdoor recreation areas and shall cooperate with the division of parks and wildlife in the enforcement of laws, rules, and regulations.

(b) Exercise general supervisory control over all activities, functions, and employees of the division;

(c) Repealed.

(d) Prepare such reports as the executive director requires the commission or director to submit;

(e) Authorize, with approval of the commission, such studies as are necessary to collect, classify, and disseminate statistics, data, and other information which, in the

director's discretion, tend to accomplish the objectives of articles 10 to 15 and 32 of this title, consistent with the state policy as set forth in section 33-10-101;

(f) Appoint special parks and recreation officers who have the power to enforce articles 10 to 15 and 32 of this title and rules of the commission. Special parks and recreation officers commissions shall not be issued until the applicant has submitted an application to the division setting forth his or her qualifications. The director may revoke such appointments at any time.

(g) (I) Obtain from powersports vehicle manufacturers the engine rotations per minute needed to conduct the SAE J1287, as defined in section 25-12-102, C.R.S., and to make the information available to law enforcement agencies in Colorado;

(II) Provide, at the director's discretion, training programs to local law enforcement agencies concerning the enforcement of section 25-12-110 (1) and (2), C.R.S.;

(III) Cooperate with federal agencies, Colorado agencies, and political subdivisions of Colorado to enforce section 25-12-110 (1) and (2), C.R.S.; and

(IV) Issue an annual report, by January 15 of each year, to the executive director and the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, or any successor committees, containing the following information:

(A) The results of a survey of federal, state, and local governments to ascertain the success of the cooperation, education, training, and enforcement components of this paragraph (g) and section 25-12-110, C.R.S.;

(B) The expenditures of moneys appropriated for providing training and purchasing of equipment to enforce section 25-12-110 (1) and (2), C.R.S., and any other sources of funding, public or private, for the implementation of this act deemed important by the director; and

(C) The progress and status of the cooperation efforts required by subparagraph (III) of this paragraph (g).

Source: **L. 84:** Entire article added, p. 886, § 2, effective January 1, 1985. **L. 95:** (1)(a), (1)(e), and (1)(f) amended, p. 966, § 3, effective July 1. **L. 98:** (1)(a) amended, p. 751, § 6, effective May 22. **L. 2008:** (1)(g) added, p. 2104, § 6, effective July 1, 2009. **L. 2012:** (1)(c) repealed and (1)(d), (1)(e), and (1)(f) amended, (HB 12-1317), ch. 248, p. 1218, § 35, effective June 4.

Editor's note: This section is similar to former §§ 33-30-106 and 33-30-107 as they existed prior to 1984.

33-10-110. Expenses of employees. (1) In addition to their salaries, all employees of the division shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties.

(2) In addition to the compensation paid employees of the division and in addition to reimbursement for all actual and necessary expenses as provided in subsection (1) of this section, each employee of the division who is vested with the rights and powers of a certified parks and recreation officer, including the chief enforcement officer and the assistant chief enforcement officer, shall, because of the number of hours and the extraordinary service performed by such an employee, be further reimbursed for maintenance and ordinary expenses incurred in the performance of his duties in such amount as shall be determined by the director, but the amount authorized under this subsection (2) for any such employee of the division shall not exceed the sum of fifty dollars per month.

Source: **L. 84:** Entire article added, p. 886, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-30-109 as it existed prior to 1984.

33-10-111. Parks and outdoor recreation cash fund created - fees - accounting expenditures for roads and highways - repeal. (1) Except as provided in sections 33-14-106, 33-14.5-106, and 33-15-103, all moneys derived from division facilities and fees, and all interest earned on such moneys, shall be credited to the parks and outdoor recreation cash fund, which is hereby created, together with all moneys donated, transferred, or appropriated from whatever source for the use of the division in administering, managing, and supervising the state parks and outdoor recreation system and in the financing of impact assistance grants pursuant to part 3 of article 25 of title 30, C.R.S. All cash receipts from state-owned desert, saline, and internal improvement lands shall be credited to the parks and outdoor recreation cash fund.

(2) The director, with the consent and approval of the executive director, is authorized and directed to establish an adequate system of accounting which will accurately record:

- (a) All moneys received and from what sources;
- (b) All moneys expended and for what purposes;
- (c) All passes, permits, and registrations that are issued, numbering each type separately.

(3) In his annual budget request to the governor, the executive director shall clearly show the allocation of funds used for parks and outdoor recreation purposes among operations, land acquisition, capital construction, and other purposes.

(4) At each regular session, the general assembly shall determine the amounts to be expended by the division for the acquisition of rights-of-way for the construction, improvement, repair, and maintenance of public roads and highways in state recreation areas and parks and shall appropriate such amounts from the state allocation provided by section 43-4-206, C.R.S., from the highway users tax fund to the division as are necessary to accomplish these purposes.

(5) (a) Subject to this subsection (5), the commission may set fees by rule for the use of facilities and programs of the division, including discounts for marketing purposes. The commission shall:

(I) Before adopting any such rule, provide the joint budget committee with the proposed rule and the commission's analysis of the proposed rule;

(II) By November 1 of each year, submit a list of such fees to the general assembly's joint budget committee, the finance committees of the senate and the house of representatives, the house agriculture, livestock, and natural resources committee, and the senate agriculture, natural resources and energy committee.

(b) (I) All actions of the commission to change fees are subject to the requirements of the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Whenever the commission desires to change any fee, the commission shall conduct rule-making, with timely notice and an opportunity for comment by interested parties.

(II) In its annual budget request to the general assembly, the commission shall include the amount of any fee changed, proposed, or under consideration by the commission.

(III) and (IV) Repealed.

(c) This subsection (5) is repealed, effective September 1, 2017.

Source: **L. 84:** Entire article added, p. 887, § 2, effective January 1, 1985. **L. 91:** (4) amended, p. 1071, § 47, effective July 1. **L. 96:** (1) amended and (5) added, p. 778, § 1, effective May 23. **L. 2000:** (5)(b)(III) amended and (5)(b)(IV) added, p. 1598, § 1, effective August 2. **L. 2003:** (5)(a) amended, (5)(b)(III) and (5)(b)(IV) repealed, and (5)(c) added, pp. 1528, 1529, §§ 1, 3, effective May 1; (4) amended, p. 1943, § 10, effective May 22. **L. 2007:** (5)(c) amended, p. 700, § 1, effective May 3. **L. 2012:** IP(5)(a), (5)(a)(I), (5)(b)(I), (5)(b)(II), and (5)(c) amended, (HB 12-1317), ch. 248, p. 1218, § 36, effective June 4.

Editor's note: This section is similar to former § 33-30-110 as it existed prior to 1984.

33-10-111.5. Parks and outdoor recreation emergency reserve cash fund - stores revolving fund - created. (1) There is hereby created in the state treasury a fund to be known as the parks and outdoor recreation emergency reserve cash fund. Moneys in an

amount as specified in subsection (2) of this section from the parks and outdoor recreation cash fund created in section 33-10-111 that are not otherwise expended pursuant to that section shall be credited to the parks and outdoor recreation emergency reserve cash fund. Such fund shall be available to be used if there are insufficient funds in the parks and outdoor recreation cash fund at the end of any fiscal year for appropriations affecting the division made in that fiscal year.

(2) For each fiscal year, a portion of the parks and outdoor recreation cash fund year-end balances shall be credited to the parks and outdoor recreation emergency reserve cash fund so that by fiscal year 2007, the balance in the parks and outdoor recreation emergency reserve cash fund shall total one million dollars. For the fiscal year 2008 and for each fiscal year thereafter, the balance in the parks and outdoor recreation emergency reserve cash fund shall increase by one percent of the overall appropriation to the division of parks and wildlife for state park operations; except that the balance in the parks and outdoor recreation emergency reserve cash fund shall not exceed ten percent of the total amount appropriated for state park operations. For fiscal years 1989 to 1996, the general assembly shall specify the amount to be credited to the parks and outdoor recreation emergency reserve cash fund for each fiscal year.

(3) The parks and outdoor recreation cash fund shall not be unreasonably used to offset any general fund restriction or reduction that is imposed on the department of natural resources.

(4) There is hereby created a stores revolving fund in the amount of two hundred thousand dollars, which amount shall be maintained to acquire stock for warehousing and distributing supplies for retail sales to visitors. On July 1, 2003, the state treasurer shall transfer two hundred thousand dollars from the parks and outdoor recreation cash fund to the revolving fund. The moneys in such fund shall under no circumstances be used for the payment of operating expenses but shall be maintained intact as a revolving fund of two hundred thousand dollars, composed of the following assets: Cash, accounts receivable, and inventory supplies. The purpose of the fund is to provide better budgetary control, and nothing contained in this subsection (4) shall authorize the division to make any purchases or acquisitions in any manner except as provided by law. Any surplus in the revolving fund in excess of two hundred thousand dollars shall revert to the parks and outdoor recreation cash fund at the close of each fiscal year.

Source: L. 89: Entire section added, p. 1351, § 4, effective May 26. L. 92: (2) amended, p. 1977, § 1, effective July 1. L. 2003: (4) added, p. 1529, § 4, effective May 1. L. 2007: (2) amended, p. 700, § 2, effective May 3.

33-10-112. Federal aid projects income fund. There is hereby created a fund designated as the federal aid projects income fund to which shall be credited certain revenues and earnings derived from properties purchased and operated jointly by the United States government and the state of Colorado under the provisions of this article, and the provisions of the acts of congress referred to therein, and the rules and regulations of the United States department of the interior. Such revenues and earnings so credited shall be limited to those specific revenues and earnings to which each has a right under the provisions of cooperative agreements establishing such rights. All moneys credited under the provisions of this section are specifically appropriated for the purposes for which such moneys may accrue.

Source: L. 84: Entire article added, p. 887, § 2, effective January 1, 1985.

33-10-113. Designation of agency. The division is authorized to accept and administer funds provided for the planning and development of the outdoor recreation resources of this state pursuant to the provisions of the act of congress entitled the "Land and Water Conservation Fund Act of 1965", as amended. In connection with obtaining for the state of Colorado the benefits of any such programs, the division shall coordinate its activities with and represent the interest of all agencies of the state and of counties, cities, and other local governments having an interest in the planning, development, and maintenance of outdoor recreation resources within the state.

Source: L. 84: Entire article added, p. 888, § 2, effective January 1, 1985.

Cross references: For the “Land and Water Conservation Fund Act of 1965”, see Pub.L. 88-578, codified at 16 U.S.C. secs. 460d and 460l-4 to 460l-11.

33-10-114. Limitation on division and commission authority. (1) Neither the commission nor the division shall enter into any mitigation agreements with any agency of the federal government relating to the transfer or exchange of land or water condemned by the federal government without the express consent of the general assembly.

(2) Nothing in subsection (1) of this section prevents the commission or the division from entering into common agreements with a federal agency pertaining to the administration or management of federally owned lands.

Source: L. 84: Entire article added, p. 888, § 2, effective January 1, 1985. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1219, § 37, effective June 4.

Editor’s note: This section is similar to former § 33-30-107.5 as it existed prior to 1984.

33-10-115. Use of parks and recreational areas by nonprofit search and rescue organizations - definitions - rules. (1) This section shall be known and may be cited as the “Colorado Search and Rescue State Parks Usage Act”.

(2) As used in this section:

(a) “Park, recreation area, or facility” means:

(I) A state park;

(II) A state recreation area; or

(III) A state-owned facility that is open to the public and related to or adjoining a state park or a state recreation area.

(b) “Public or nonprofit search and rescue organization” means a not-for-profit entity that performs search and rescue, disaster relief, or national defense missions in Colorado. The term includes, without limitation, the Colorado civil air patrol, governmental search and rescue organizations, and the Colorado search and rescue board.

(c) “Training activities” means official drills, exercises, live missions, or other such activities that provide instruction to search and rescue personnel, that are conducted at any time of the day, including, without limitation, overnight or over several days and nights.

(3) A public or nonprofit search and rescue organization shall be exempt from all park fees when the organization is using a park, recreation area, or facility to conduct training activities.

(4) The commission shall promulgate rules as are reasonably necessary to implement this section.

Source: L. 2009: Entire section added, (SB 09-182), ch. 148, p. 616, § 2, effective April 20. **L. 2012:** (4) amended, (HB 12-1317), ch. 248, p. 1219, § 38, effective June 4.

ARTICLE 10.5

Aquatic Nuisance Species

33-10.5-101.	Legislative declaration.	33-10.5-106.	Duty to report.
33-10.5-102.	Definitions.	33-10.5-107.	Commission to promulgate rules.
33-10.5-103.	Powers and duties of the divisions - annual report.	33-10.5-108.	Division of parks and outdoor recreation aquatic nuisance species fund - creation - division of wildlife aquatic nuisance species fund - creation.
33-10.5-104.	Inspection of conveyances - impoundment and quarantine.		
33-10.5-105.	Prohibition of aquatic nuisance species - penalties.		

33-10.5-101. Legislative declaration. The general assembly hereby recognizes the devastating economic, environmental, and social impacts of aquatic nuisance species on the aquatic resources and water infrastructure of the state. The general assembly further recognizes the potential of recreational vessels to be a significant source of the spread of aquatic nuisance species in Colorado. Therefore, the general assembly finds, determines, and declares that the purposes of enacting this article are to implement actions to detect, prevent, contain, control, monitor, and, whenever possible, eradicate aquatic nuisance species from the waters of the state and to protect human health, safety, and welfare from aquatic nuisance species. It is the intent of the general assembly to foster and encourage, to the greatest extent possible, voluntary compliance with this article. It is the intent of the general assembly that prevention, containment, and eradication of aquatic nuisance species in waters of the state in which such species have been detected or are likely to be introduced shall be the division's highest priorities.

Source: L. 2008: Entire article added, p. 1583, § 1, effective May 29.

33-10.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Aquatic nuisance species" means exotic or nonnative aquatic wildlife or any plant species that have been determined by the commission to pose a significant threat to the aquatic resources or water infrastructure of the state.

(2) "Authorized agent" means any person, employee, or representative of local, state, or federal government or any subdivision of the government that is authorized by the government or governmental subdivision to temporarily stop, detain, and inspect a conveyance for aquatic nuisance species.

(3) Repealed.

(4) "Conveyance" means a motor vehicle, vessel, trailer, or any associated equipment or containers, including, but not limited to, live wells, ballast tanks, and bilge areas that may contain or carry an aquatic nuisance species.

(5) "Decontaminate" means to wash, drain, dry, or chemically or thermally treat a conveyance in accordance with rules promulgated by the commission in order to remove or destroy an aquatic nuisance species.

(6) "Division" means the division of parks and wildlife created in section 33-9-104.

(7) "Equipment" means an article, tool, implement, or device capable of containing or transporting water.

(8) "Inspect" means to examine a conveyance pursuant to procedures established by the commission by rule in order to determine whether an aquatic nuisance species is present, and includes examining, draining, or chemically treating water in the conveyance.

(9) "Qualified peace officer" means a Colorado wildlife officer, special parks officer, or special wildlife officer; a parks and recreation officer; a peace officer in the department of public safety; and a peace officer with jurisdiction over any waters of the state.

Source: L. 2008: Entire article added, p. 1584, § 1, effective May 29. **L. 2012:** (1), (5), and (8) amended and (3) repealed, (HB 12-1317), ch. 248, p. 1219, § 39, effective June 4.

33-10.5-103. Powers and duties of the division - annual report. (1) In order to prevent, control, contain, monitor, and, whenever possible, eradicate aquatic nuisance species from the waters of the state, the division is authorized to establish, operate, and maintain aquatic nuisance species check stations in order to inspect conveyances pursuant to section 33-10.5-104.

(2) Upon a reasonable belief that an aquatic nuisance species may be present, the division may:

(a) Require the owner of a conveyance to decontaminate the conveyance; or

(b) Decontaminate or impound and quarantine the conveyance pursuant to section 33-10.5-104.

(3) The division may monitor the waters of the state for the presence of aquatic nuisance species, but only if the division has received permission to monitor from the persons controlling access to such waters.

(4) The division shall, in cooperation with the department of public safety, the Colorado office of economic development, the Colorado tourism office, the water conservation board created in section 37-60-102, C.R.S., and the department of agriculture, develop a strategic statewide plan to prevent, control, monitor, educate persons about, and, whenever possible, eradicate aquatic nuisance species.

(5) Beginning on January 15, 2009, and on or before January 15 of each year thereafter, the division and the water conservation board created in section 37-60-102, C.R.S., shall make an annual report of the efforts in addressing aquatic nuisance species in Colorado for the preceding calendar year to the joint house agriculture, livestock, and natural resources committee and the senate agriculture, natural resources, and energy committee, or its successor committee. Each such report shall set forth a complete operating and financial statement covering the aquatic nuisance species operations of the division during the year.

Source: L. 2008: Entire article added, p. 1584, § 1, effective May 29.

33-10.5-104. Inspection of conveyances - impoundment and quarantine.

(1) (a) Every qualified peace officer is authorized to enforce this article; except that such officer shall have a reasonable belief that a conveyance may contain an aquatic nuisance species before the officer orders the conveyance decontaminated or impounded and quarantined.

(b) Every qualified peace officer is authorized to stop and inspect for the presence of aquatic nuisance species a conveyance:

- (I) Prior to a vessel being launched onto waters of the state;
- (II) Prior to departing from the waters of the state or a vessel staging area;
- (III) That is visibly transporting any aquatic plant material; and
- (IV) Upon a reasonable belief that an aquatic nuisance species may be present.

(2) Except as provided in subsection (4) of this section, a qualified peace officer may impound and quarantine a conveyance if:

(a) The qualified peace officer finds or reasonably believes that an aquatic nuisance species may be present after conducting an inspection authorized by this article;

(b) The person transporting the conveyance refuses to submit to an inspection authorized by this article for the presence of an aquatic nuisance species; or

(c) The person transporting the conveyance refuses to comply with an order authorized by this article to decontaminate the conveyance.

(3) The impoundment and quarantine of a conveyance may continue for the reasonable period necessary to inspect and decontaminate the conveyance and ensure that the aquatic nuisance species has been completely eradicated from the conveyance and is no longer living.

(4) Notwithstanding any provision to the contrary, no motor vehicle that is drawing a conveyance shall be impounded or quarantined pursuant to this article; however, the conveyance being drawn is still subject to impoundment and quarantine under this section.

(5) An authorized agent shall have the authority to stop, detain, and inspect a conveyance for the presence of an aquatic nuisance species; however, unless the authorized agent is a qualified peace officer, the authorized agent has no authority to impound and quarantine or order a conveyance decontaminated.

Source: L. 2008: Entire article added, p. 1585, § 1, effective May 29.

33-10.5-105. Prohibition of aquatic nuisance species - penalties. (1) No person shall:

- (a) Possess, import, export, ship, or transport an aquatic nuisance species;
 - (b) Release, place, plant, or cause to be released, placed, or planted into the waters of the state an aquatic nuisance species; or
 - (c) Refuse to comply with a proper order issued under this article.
- (2) A person who knowingly or willfully violates subsection (1) of this section:

(a) For a first offense, is guilty of a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction, shall be subject to a fine of one hundred fifty dollars and shall be issued a warning of the increased penalties for subsequent violations from the division;

(b) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined one thousand dollars; and

(c) For a third and any subsequent offense, commits a class 2 misdemeanor and, upon conviction, shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2008: Entire article added, p. 1586, § 1, effective May 29.

33-10.5-106. Duty to report. A person who knows that an aquatic nuisance species is present at a specific location shall immediately report such knowledge and all pertinent information to the division.

Source: L. 2008: Entire article added, p. 1587, § 1, effective May 29.

33-10.5-107. Commission to promulgate rules. (1) The commission is authorized to promulgate rules pursuant to article 4 of title 24, C.R.S., as necessary to prevent, control, contain, monitor, and, whenever possible, eradicate aquatic nuisance species. In promulgating such rules, the commission shall consult with any affected state, federal, and tribal governmental entities and subdivisions thereof, including special districts, water conservancy districts, and water supply agencies.

(2) The commission shall promulgate rules to administer and enforce this article. Such rules shall include:

(a) Procedures for the inspection of conveyances for the presence of aquatic nuisance species;

(b) Procedures for the impoundment and quarantine of conveyances pursuant to section 33-10.5-104, including notification of the location and contact information to owners of impounded conveyances;

(c) Procedures for the decontamination of conveyances and destruction of aquatic nuisance species removed from conveyances;

(d) Methods to establish proof that a conveyance has been decontaminated;

(e) Processes for the facilitation of the reporting required by section 33-10.5-106; and

(f) Policies for the monitoring and identification of the waters of the state or geographic areas that are or may be infested with aquatic nuisance species.

Source: L. 2008: Entire article added, p. 1587, § 1, effective May 29. **L. 2012:** (1) and IP(2) amended, (HB 12-1317), ch. 248, p. 1220, § 40, effective June 4.

33-10.5-108. Division of parks and outdoor recreation aquatic nuisance species fund - creation - division of wildlife aquatic nuisance species fund - creation.

(1) (a) There is hereby created in the state treasury the division of parks and outdoor recreation aquatic nuisance species fund, which shall be administered by the division of parks and wildlife in the department of natural resources and shall consist of all moneys transferred by the treasurer as specified in section 39-29-109.3 (2) (m), C.R.S. All moneys in the fund are continuously appropriated to the division of parks and wildlife for the purpose of implementing the provisions of this article. All moneys in the fund at the end of each fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(b) In the use of such moneys, priority shall be given to containment and eradication of aquatic nuisance species in the waters of the state in which such species have been detected and prevention of the introduction of nuisance species in areas determined to be most vulnerable to such an introduction.

(2) (a) There is hereby created in the state treasury the division of wildlife aquatic nuisance species fund, which shall be administered by the division of parks and wildlife in

the department of natural resources and shall consist of all moneys transferred by the treasurer as specified in sections 33-1-112 and 39-29-109.3 (2) (m), C.R.S. All moneys in the fund are continuously appropriated to the division of parks and wildlife for the purpose of implementing the provisions of this article. All moneys in the fund at the end of each fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(b) In the use of such moneys, priority shall be given to containment and eradication of aquatic nuisance species in the waters of the state in which such species have been detected and prevention of the introduction of nuisance species in areas determined to be most vulnerable to such an introduction.

Source: **L. 2008:** Entire article added, p. 1587, § 1, effective May 29; entire section amended, p. 1590, § 7, effective May 29.

ARTICLE 11

Recreational Trails

Editor’s note: This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 42 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-11-101.	Short title.	33-11-108.	State trails system.
33-11-102.	Legislative declaration.	33-11-109.	Trail categories - rules.
33-11-103.	Definitions.	33-11-110.	Uniform signs and markers.
33-11-104.	Acquisition.	33-11-111.	Cooperation with state agen-
33-11-105.	Recreational trails committee.		cies.
33-11-106.	Responsibilities of committee.	33-11-112.	Trails enforcement.
33-11-107.	Availability of funds.		

33-11-101. Short title. This article shall be known and may be cited as the “Recreational Trails System Act of 1971”.

Source: **L. 84:** Entire article added, p. 888, § 2, effective January 1, 1985.

Editor’s note: This section is similar to former § 33-42-101 as it existed prior to 1984.

33-11-102. Legislative declaration. (1) In order to provide for the greatly increasing outdoor needs of a rapidly expanding Colorado population for public access to, travel within, and enjoyment and appreciation of the out-of-doors areas of Colorado and for the conservation, development, and use of natural resources against fire and other natural and geological hazards, it is hereby declared to be the public policy of this state and among the purposes of this article to: Increase the accessibility and encourage the use of such natural resources by the residents of this state and by nonresidents; provide opportunity for the development of public and private facilities for persons visiting and utilizing the natural resources of this state; encourage an increase in riding, hiking, bicycling, and other compatible recreational activities as influences for the improvement of the health and welfare of the people; and to provide for the needs of specialized recreational motor vehicles. It is recognized that joint simultaneous trail use by motorized and nonmotorized interests may at times be incompatible, and it is the intent of this article to provide separate trails and facilities for each of such motorized and nonmotorized interests, when feasible.

(2) To implement the provisions of subsection (1) of this section and as additional purposes of this article, the state may: Establish and maintain trails on a statewide basis to connect, when feasible and practical, the units of the parks and outdoor recreation system, federal recreational lands, and other trails systems; perpetuate and provide the use of and access to regions and trails of special or historic interest within the state; assist local

governments in serving the requirements of the urban and other population centers of the state; encourage the multiple use of public rights-of-way and utilize to the fullest extent the existing and future scenic roads, highways, parkways, and federally administered trails where feasible as recreational trails; encourage the development and maintenance of recreational trails by counties, cities, and special improvement districts and assist in such development and maintenance by all means available; coordinate trail plans and development among legal jurisdictions and with the state and federal governments; encourage, when possible, the development of trails on federal lands by the federal government; and promote at all levels of government a more complete use of all or any portion of public property for recreational purposes.

(3) A further purpose of this article is to promote the establishment and operation of a statewide network of trails, to be known as the "Colorado greenway trails system", along and between the state's lakes, streams, or reservoirs linking cities, towns, communities, and river basins. The Colorado greenway trails system shall be established and operated in a manner that promotes recreational opportunities along lakes, streams, or reservoirs, that provides access to and is a part of an integrated trail system, that protects water rights and real property rights, and that minimizes conflicts between recreationists and others to minimize adverse impacts on natural features and sensitive habitats.

Source: L. 84: Entire article added, p. 888, § 2, effective January 1, 1985. **L. 90:** (3) added, p. 1533, § 1, effective May 29.

Editor's note: This section is similar to former § 33-42-102 as it existed prior to 1984.

33-11-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Committee" means the Colorado recreational trails committee.

(2) "Local government" means a city, town, county, city and county, or political subdivision of the state charged by law with and engaged in the administration of a parks or recreation program.

(3) "Motorized trails" means trails for the use of motorized vehicles where designated in the trail plan and as posted on the trail, as may be required by law.

(4) "Nonmotorized trails" means riding, hiking, bicycling, and other recreational trails for the use of the public on which motorized vehicles are prohibited except in emergencies.

(5) "Recreational trail" means a trail which is used for a recreational purpose, such as hiking, horseback riding, snowshoeing, cross-country skiing, bicycling, or the riding of motorized recreational vehicles along routes of scenic, natural, historic, geologic, or water-oriented interest.

(6) "Riders" and "riding" means, respectively, horseback riders and horseback riding, snowmobile riders and snowmobiling, and recreational vehicle riders and recreational vehicle riding.

(7) "Trail corridor" means the recreational trail plus a scenic or recreational easement, if such easement is acquired as a part of the recreational trail and if it is essential to the recreational experience of the trail user.

Source: L. 84: Entire article added, p. 889, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-42-103 as it existed prior to 1984.

33-11-104. Acquisition. (1) In order to provide recreational trails in a statewide system of positive recreational value, the division may acquire reasonable trail rights-of-way or easements. In selecting the rights-of-way, full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the trails system shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. Acquisition shall be, whenever possible, through donations, purchased with donated funds, or through easements and

exchanges. When such methods fail, the division may authorize expenditure of state appropriations for acquisition in fee. Agreements for less than fee shall be for terms of not less than twenty-five years whenever possible.

(2) The division may abandon all or any portion of a trail or easement acquired for trail purposes which is no longer necessary for such purposes, or it may transfer any trail or easement acquired for trail purposes to a local government having jurisdiction over the area in which the trail or easement is located if such local government agrees to maintain and operate the trail.

(3) The division shall notify the owner of land through which any trail or easement acquired for trail purposes passes prior to entering into an operating agreement for that trail with any local government, and it shall secure the consent of the landowner prior to the transfer of any trail or easement acquired for trail purposes to a local government.

(4) Nothing in this article shall permit the acquisition of recreational trails by proceedings in eminent domain by any state agency or any unit of local government or any agency thereof; except that, when a recreational trail is included within a highway right-of-way, the department of transportation may acquire such contiguous land as a part of the right-of-way as is necessary to permit the uninterrupted continuation of the recreational trail.

(5) Nothing in this section modifies, impairs, or supersedes the authority of the commission or the ability of the division to acquire any interest in water or water rights pursuant to section 33-10-107 (1) (a).

(6) Trails acquired pursuant to this article shall not be used for purposes of annexation or access to private lands. Access to private property may be allowed upon consent of the landowner. Nothing in this subsection (6) shall preclude the annexation of private lands with the consent of the landowner.

Source: **L. 84:** Entire article added, p. 889, § 2, effective January 1, 1985. **L. 90:** (4) amended and (5) and (6) added, p. 1533, § 2, effective May 29. **L. 91:** (4) amended, p. 1071, § 48, effective July 1. **L. 2012:** (5) amended, (HB 12-1317), ch. 248, p. 1220, § 41, effective June 4.

Editor's note: This section is similar to former § 33-42-104 as it existed prior to 1984.

ANNOTATION

Subsection (4) does not establish a general limitation on a municipality's eminent domain rights. It merely clarifies that this article itself does not grant any eminent domain author-

ity. It does not affect a municipality's right to seek condemnation if it has authorization independent of this article. *Town of Parker v. Norton*, 939 P.2d 535 (Colo. App. 1997).

33-11-105. Recreational trails committee. (1) There is hereby created the Colorado recreational trails committee, which is advisory and consists of nine members, eight of whom are appointed by the commission. One member shall be appointed from the governing committee of the state board of the great outdoors Colorado trust fund created by section 6 of article XXVII of the state constitution. The terms of the members appointed by the commission are four years. No member shall serve more than two consecutive terms. One member shall be appointed from each congressional district, one member shall be appointed from the state at large, and one member shall represent and be appointed by the state board of the great outdoors Colorado trust fund. The committee shall include in its membership representation of the broad spectrum of trail users. Vacancies on the committee shall be filled for the unexpired term by the appropriate appointing authority set forth in this subsection (1).

(2) The committee shall meet not less than four times annually to advise the division on all matters directly or indirectly pertaining to trails and their use, extent, and location and the objectives and purposes of this article.

(3) Repealed.

Source: **L. 84:** Entire article added, p. 890, § 2, effective January 1, 1985. **L. 86:** (3) added, p. 423, § 52, effective March 26. **L. 89:** (3) repealed, p. 1147, § 3, effective April 6. **L. 95:** (1) amended, p. 338, § 2, effective July 1. **L. 2002:** (1) amended, p. 946, § 9, effective August 7. **L. 2006:** (1) amended, p. 289, § 1, effective August 7. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1220, § 42, effective June 4.

Editor's note: This section is similar to former § 33-42-105 as it existed prior to 1984.

33-11-106. Responsibilities of committee. (1) The committee, with the approval of the commission, shall coordinate trail development among local governments and shall assist local governments in the formation of their trail plans and advise the commission quarterly of its findings. In carrying out this responsibility, the committee shall review records of easements and other interests in land which are available and may be adapted for recreational trail usage, including public lands, utility easements, floodplains, railroad and other rights-of-way, geological hazard areas, gifts of land or interests therein, and steep slope areas. The committee shall advise the commission in the development of uniform standards for trail construction that may be adopted by the commission for statewide use and that shall be made available to participating local governments. The committee shall offer plans and methods for funding a trails system through user fees or other financing methods.

(2) Repealed.

Source: **L. 84:** Entire article added, p. 890, § 2, effective January 1, 1985. **L. 86:** Entire section amended, p. 423, § 53, effective March 26. **L. 89:** (2) repealed, p. 1147, § 3, effective April 6. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1221, § 43, effective June 4.

Editor's note: This section is similar to former § 33-42-106 as it existed prior to 1984.

33-11-107. Availability of funds. The commission is authorized to make funds appropriated by the general assembly for the purposes of this article available to local governments and nonprofit organizations in accordance with criteria developed by the committee and adopted by the commission. The committee shall advise the commission of its recommendations for the allocation of such funds among participating local governments and nonprofit organizations.

Source: **L. 84:** Entire article added, p. 890, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 338, § 3, effective July 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1221, § 44, effective June 4.

Editor's note: This section is similar to former § 33-42-107 as it existed prior to 1984.

33-11-108. State trails system. (1) The commission shall designate a state trails system. The trails comprising such system shall meet criteria established by the commission and shall be consistent with the objectives of this article.

(2) The commission shall establish a procedure whereby federal, state, and local governments and nongovernmental organizations may propose trails for inclusion within the system.

(3) In consultation with appropriate federal, state, and local governments and nongovernmental organizations, the commission shall establish a procedure for review and public hearings upon proposals for the inclusion of trails in the system.

(4) The commission may participate in the planning, establishment, development, and long-term operation and maintenance of segments of national scenic trails which might be authorized by the congress of the United States.

(5) The establishment of trails to or along lakes, streams, or reservoirs shall not constitute any determination relative to the suitability of the river segment for designation as a wild, scenic, or recreational river under the federal "Wild and Scenic Rivers Act".

Source: **L. 84:** Entire article added, p. 891, § 2, effective January 1, 1985. **L. 90:** (5) added, p. 1534, § 3, effective May 29. **L. 2012:** (1) to (4) amended, (HB 12-1317), ch. 248, p. 1221, § 45, effective June 4.

Editor's note: This section is similar to former § 33-42-108 as it existed prior to 1984.

Cross references: For the federal "Wild and Scenic Rivers Act", see Pub.L. 90-542, codified at 16 U.S.C. sec. 1271 et seq.

33-11-109. Trail categories - rules. (1) Any of the following categories of trails may be established:

(a) Cross-state trails which connect scenic, historical, geological, or other significant features which are characteristic of the state;

(b) Water-oriented trails which provide a designated path to or along lakes, streams, or reservoirs in which water and other water-oriented recreational opportunities are the primary points of interest;

(c) Scenic-access trails which give access to quality recreation, scenic, historic, or cultural areas of statewide or nationwide significance;

(d) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, urban trails shall connect parks, scenic areas, historical points, and neighboring communities.

(e) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state.

(2) The planning and designation of trails for the state trails system shall take into account and give due regard to the interests of federal agencies, state agencies, individuals, and interested recreation organizations. The categories set forth in subsection (1) of this section need not be used to label specific trails, but the division shall assure that full consideration is given to including trails from all categories within the system.

(3) The commission, through the division, is authorized to conduct studies, and to promulgate such rules as may be necessary for establishing and managing the Colorado greenway trails system. The commission shall consult and cooperate with the Colorado water conservation board, transportation commission, Colorado water resources and power development authority, and all other appropriate units of state government and political subdivisions of the state, including any county, city, city and county, and water conservation and conservancy district; any other public and private persons; and any appropriate federal agencies to establish a Colorado greenway trails system that minimizes adverse impacts on activities, natural features, and sensitive habitats adjacent to trails.

Source: **L. 84:** Entire article added, p. 891, § 2, effective January 1, 1985. **L. 90:** (3) added, p. 1534, § 4, effective May 29. **L. 91:** (3) amended, p. 1071, § 49, effective July 1. **L. 2011:** (3) amended, (SB 11-208), ch. 293, p. 1391, § 18, effective July 1. **L. 2012:** (3) amended, (HB 12-1317), ch. 248, p. 1221, § 46, effective June 4.

Editor's note: This section is similar to former § 33-42-109 as it existed prior to 1984.

33-11-110. Uniform signs and markers. The commission may establish uniform signs and markers, which signs and markers may include appropriate and distinctive symbols. Where trails cross lands administered by federal agencies, such markers may be provided and erected by the appropriate federal agency at appropriate points along trails and maintained by the federal agency administering the trails in accordance with standards mutually established by the division and the federal agency concerned. Where trails cross lands of state or local governmental agencies, the division may provide such uniform signs and markers to such agencies in accordance with written agreements and may require such agencies to erect and maintain them in accordance with standards established in such agreements.

Source: L. 84: Entire article added, p. 891, § 2, effective January 1, 1985. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1222, § 47, effective June 4.

Editor's note: This section is similar to former § 33-42-110 as it existed prior to 1984.

33-11-111. Cooperation with state agencies. The department of transportation, the state board of land commissioners, the urban drainage and flood control district, and other state agencies and political subdivisions having jurisdiction or control over or information concerning the use, abandonment, or disposition of highway or utility rights-of-way or other properties that may be suitable for the purpose of improving or expanding the state trails system shall cooperate with the division to assure, to the extent practicable, that any such properties that are suitable for trail purposes may be made available for such use.

Source: L. 84: Entire article added, p. 892, § 2, effective January 1, 1985. **L. 91:** Entire section amended, p. 1072, § 50, effective July 1. **L. 2005:** Entire section amended, p. 670, § 9, effective June 1.

Editor's note: This section is similar to former § 33-42-111 as it existed prior to 1984.

33-11-112. Trails enforcement. It is unlawful for any person, except a parks and recreation officer or other peace officer, to operate a motorized vehicle on a signed and designated nonmotorized trail. Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred fifty dollars.

Source: L. 84: Entire article added, p. 892, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 970, § 13, effective July 1. **L. 2003:** Entire section amended, p. 1944, § 11, effective May 22.

Editor's note: This section is similar to former § 33-42-112 as it existed prior to 1984.

ARTICLE 12

Passes and Registrations

Editor's note: This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 4 of this title and in § 33-7-102. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-12-100.2.	Legislative declaration.	33-12-105.	Licensing violations.
33-12-101.	Passes and registrations - rules - definition.	33-12-106.	Park entrance privileges - identified veterans - wounded warriors - search and rescue organizations conducting training activities - legislative declaration - rules.
33-12-102.	Types of passes and registrations - fees - repeal. (Repealed)		
33-12-103.	Aspen leaf annual pass - aspen leaf lifetime pass - rules - report.	33-12-107.	Agreements with special districts to collect special district tolls for access road maintenance furnished by special districts. (Repealed)
33-12-103.5.	Columbine annual pass - rules.		
33-12-104.	Pass and registration agents - reports - board of claims - unlawful acts - rules.		

33-12-100.2. Legislative declaration. The general assembly hereby finds, determines, and declares that the system of state parks and state recreation areas is vital to the economic health and well-being of the entire state of Colorado and that such system of parks and

recreation areas provides an important benefit to the citizens of this state and to the tourists from outside the state who visit and make use of such state parks and recreation areas. Because of the nature and operation of such state parks and recreation areas, the system can be largely self-supporting, and the users of such resources can help to fund the system's operation and maintenance. The general assembly declares and intends that as a matter of state policy the system of state parks and state recreation areas should be financed as much as reasonably possible through revenues derived from the users of such system.

Source: L. 89: Entire section added, p. 1349, § 1, effective May 26.

33-12-101. Passes and registrations - rules - definition. (1) (a) Except as specified in section 33-12-103 (1) (b), every pass or registration expires on the date printed or written on the face of the document. The commission may adopt rules establishing a subscription program through which a person to whom an annual pass has been issued pursuant to this article is notified, prior to the expiration of the pass, of the opportunity to renew the pass by mail or other means determined by the commission. As used in this article, "document" means pass or registration.

(b) When, in articles 10 to 15 and 32 of this title or a rule adopted pursuant thereto, the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time indicated includes both dates specified.

(2) Money received in payment for passes and registrations issued under articles 10 to 15 of this title shall not be refunded, except as follows:

(a) For proven errors committed by the division in issuing passes or registrations;

(b) For bona fide emergencies as may be determined by the division.

(3) In the event of loss or destruction of a pass or registration, the person to whom the document was issued, upon payment of a fee of fifty percent of the cost of the original document, but not to exceed five dollars, may obtain a replacement pass or registration by signing an affidavit stating where and by whom said document was issued and the circumstances under which the document was lost or destroyed. If the division determines that a pass or registration has been lost or destroyed in the mail, the person to whom the document was issued may obtain a replacement pass or registration without charge by signing an affidavit stating that such document was never received. The division shall supply agents selling such documents with affidavit forms for obtaining a replacement pass or registration.

Source: L. 84: Entire article added, p. 892, § 2, effective January 1, 1985. **L. 95:** (1) (b) amended, p. 966, § 4, effective July 1. **L. 2008:** (1)(a) amended, p. 380, § 1, effective August 5. **L. 2010:** (1)(a) amended, (SB 10-071), ch. 235, p. 1029, § 1, effective August 11. **L. 2012:** (1)(a) amended, (HB 12-1317), ch. 248, p. 1222, § 48, effective June 4.

Editor's note: This section is similar to former § 33-4-112 as it existed prior to 1984.

33-12-102. Types of passes and registrations - fees - repeal. (Repealed)

Source: L. 84: Entire article added, p. 892, § 2, effective January 1, 1985. **L. 85:** IP(1), (1)(a), (1)(b), and (2) amended, p. 1125, § 2, effective January 1, 1986. **L. 89:** (1.1) and (1.2) added and (2) amended, pp. 1349, 1351, §§ 2, 3, effective May 26; (1)(m) to (1)(q) added, p. 1368, § 2, effective April 1, 1990. **L. 90:** (1.3) added, p. 1834, § 2, effective March 22; (1.2)(d)(IV) added, p. 1536, § 1, effective January 1, 1991. **L. 92:** (1.2)(d) amended, p. 2180, § 48, effective June 2. **L. 93:** IP(1.2)(d) amended, p. 381, § 1, effective April 12. **L. 95:** IP(1.2), (1.2)(i), (1.2)(l), IP(1.3), (1.3)(a) amended, p. 339, § 4, effective July 1. **L. 96:** Entire section amended, p. 779, § 4, effective January 1, 1997. **L. 98:** (1.2)(a) amended, p. 1340, § 59, effective June 1; (1.2)(a) amended and (1.5) added, p. 1225, § 1, effective June 1. **L. 2003:** (1.2)(a) and (1.5) amended and (3) added, p. 1529, § 2, effective May 1.

Editor's note: (1) Subsection (3) provided for the repeal of this section, effective July 1, 2007. (See L. 2003, p. 1529.)

(2) Prior to its repeal in 2007, this section was similar to former § 33-4-106 as it existed prior to 1984.

33-12-103. Aspen leaf annual pass - aspen leaf lifetime pass - rules - report.

(1) (a) A resident of this state, as defined in section 33-10-102, may obtain from the division an aspen leaf annual pass, which pass is valid from the date the pass is purchased through the last day of the month of purchase in the following year. The commission shall determine the age of eligibility for the aspen leaf pass.

(b) (I) A resident of this state, as defined in section 33-10-102, may obtain from the division an aspen leaf lifetime pass, which is valid from the date the pass is purchased through the lifetime of the pass holder. The age of eligibility for the aspen leaf lifetime pass is the same as that for the aspen leaf annual pass pursuant to paragraph (a) of this subsection (1). Notwithstanding any provision of law to the contrary, the fee for the aspen leaf lifetime pass is as set by rule of the commission; except that the fee shall not exceed five times the cost of the aspen leaf annual pass.

(II) (A) The aspen leaf lifetime pass shall not be sold on or after March 1, 2014.

(B) Prior to that date but during the second regular session of the sixty-ninth general assembly, the department shall prepare and deliver a report to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, evaluating the aspen leaf lifetime pass. The report shall include, at a minimum, the number of aspen leaf lifetime passes sold and the financial impacts of the aspen leaf lifetime pass.

(2) Except as provided by rule of the commission, for the purpose of this section, the holder of an aspen leaf annual pass or aspen leaf lifetime pass shall own in whole or in part any vehicle used to enter a park area, the vehicle shall have a current valid registration issued by the department of revenue, and the pass holder shall be present in the vehicle. An aspen leaf pass or aspen leaf lifetime pass entitles the holder to enter state park and recreation areas during the period that the pass is valid and when such areas are open.

(3) Each aspen leaf annual pass issued shall be affixed to the vehicle for which it was issued in the manner prescribed by rule promulgated by the commission. Each aspen leaf lifetime pass shall be displayed by the person to whom it was issued, in the manner prescribed by the commission by rule, when the person enters a state park or state recreation area.

(4) The continued use of the aspen leaf annual pass and the aspen leaf lifetime pass shall be subject to the holder's observance of rules concerning the state park or the state recreation area. For a violation of any of such rules, the division has the power to suspend the pass for six months; for a second violation, for one year; and, for a third violation, indefinitely. Any person aggrieved by an action of the division taken pursuant to this subsection (4) may appeal such action in accordance with the procedures provided in article 4 of title 24, C.R.S.

Source: L. 84: Entire article added, p. 893, § 2, effective January 1, 1985. L. 93: Entire section amended, p. 381, § 2, effective April 12. L. 98: (1) and (2) amended, p. 1225, § 2, effective June 1. L. 2003: (1) amended, p. 1530, § 5, effective May 1. L. 2008: (1) amended, p. 380, § 2, effective August 5. L. 2010: Entire section amended, (SB 10-071), ch. 235, p. 1029, § 2, effective August 11. L. 2012: (1)(a), (1)(b)(I), (2), and (3) amended, (HB 12-1317), ch. 248, p. 1222, § 49, effective June 4.

33-12-103.5. Columbine annual pass - rules. (1) As used in this section, unless the context otherwise requires, a person is "disabled" if the person has been determined to be totally and permanently disabled by the social security administration, the division of workers' compensation, or pursuant to rule or regulation of the division.

(2) (a) A disabled resident may obtain from a regional office or the central office of the division, or at such other locations as may be determined by the division, a Columbine annual pass. The pass shall be valid from the date the pass is purchased through the last day

of the month of purchase in the following year. A columbine annual pass shall entitle the disabled resident to enter state park and recreation areas during the period that the pass is valid and when such areas are open.

(b) The commission, by rule, shall provide for a transferable columbine annual pass that is valid when temporarily affixed to any vehicle used to bring such pass holder into a park.

(3) The continued use of the columbine annual pass shall be subject to the holder's observance of rules and regulations concerning the state park or state recreation area.

Source: L. 98: Entire section added, p. 1226, § 3, effective June 1. L. 2008: (2) amended, p. 381, § 3, effective August 5. L. 2012: (2)(b) amended, (HB 12-1317), ch. 248, p. 1223, § 50, effective June 4.

33-12-104. Pass and registration agents - reports - board of claims - unlawful acts - rules. (1) The director may designate sole proprietors, partnerships, or corporations having permanent business locations in this state as pass and registration agents to sell, at their permanent business locations, passes and registrations. Pass and registration agents shall be paid a commission on all moneys collected for passes and registrations sold by such agents in an amount determined by the commission by rule. All agents authorized to sell passes and registrations shall keep accurate records of all sales of passes and registrations and shall make such reports to the division regarding pass and registration sales as may be required. Such agents shall be required to give evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., or a bond, in such amount as may be fixed by the division to insure the remittance of all moneys collected from such pass and registration sales, less amounts allowed as commissions, and the making of reports required by the division. The commission may promulgate rules for the establishment and cancellation of pass and registration agencies. All pass and registration moneys received shall be kept separate and apart from any other moneys of the agent authorized to sell passes and registrations and shall at all times belong to the state. All moneys due from the sale of passes and registrations belong to the state and shall draw interest at the rate of one and one-half percent per month from the time that the agency is cancelled by the division until paid.

(2) The executive director, state auditor, and attorney general, or their duly designated representatives, shall constitute a board of claims for the hearing of all claims for relief when any agent is unable to account for passes and registrations and claims that the same have been destroyed, lost, or stolen. The findings of the board of claims are subject to review pursuant to section 24-4-106, C.R.S. Claims for relief in an amount totaling one hundred dollars or less shall not be determined by the board of claims, except as otherwise provided in this section, but shall be settled by the division. If the division offers to make settlement and such settlement is not accepted by the claimant, the claimant may submit his claim to the board of claims.

(3) Every agent authorized to sell passes and registrations shall account for all passes and registrations delivered to such agent. If any agent is not able to account for any pass or registration, such agent shall be responsible for the maximum amount for which each unaccounted-for pass or registration could have been issued, except as provided in subsections (4) to (8) of this section.

(4) Any agent authorized to sell passes and registrations may make a claim under oath for relief from responsibility for passes and registrations which have been lost, stolen, or destroyed and for which such agent is unable to account, but no claim for relief shall be considered unless the agent making the claim informs the division of such loss, theft, or destruction within thirty days after such loss, theft, or destruction is discovered, said notice to set forth in detail all pertinent information then known to the agent. Upon receipt of any claim for relief, it is the duty of the division to make an investigation of the claim as soon as practicable, and for that purpose the claimant shall make available such records, information, or other pertinent data as may be in his possession or under his control. A written report of such investigation shall be filed with the board of claims.

(5) As soon as practicable after receipt of the investigator's report and in no event later than one hundred twenty days after receipt of notice of a claim for relief, the board of claims shall set a date for the hearing on such claim for relief, and the claimant may appear at the hearing if he so desires. The claimant shall be given not less than ten days' written notice of the date of the hearing, such notice to be mailed to his last-known address.

(6) The board of claims may give relief to any claimant in the following circumstances and subject to the following limitations:

(a) If the board of claims is satisfied that any passes or registrations were destroyed due to fire, flood, act of God, or any other cause beyond the control of the claimant and that destruction was not due in part to his negligence, then the board of claims may entirely relieve the claimant of the responsibility to account for such passes and registrations or make such lesser adjustment as the board of claims may deem proper.

(b) If the board of claims is satisfied that any passes or registrations were either lost, stolen, or destroyed under circumstances other than those set forth in paragraph (a) of this subsection (6), the board of claims may, in its discretion, make an adjustment of the amount due for any such passes or registrations. The board of claims, in determining what adjustment, if any, shall be allowed for any lost, stolen, or destroyed passes and registrations, may consider the following:

(I) Whether or not, or the extent to which, the loss was due to the negligence or carelessness of the claimant in the handling of passes and registrations, but no adjustment shall be made in the case of gross negligence or gross carelessness upon his part;

(II) Such other evidence as the board of claims may consider pertinent.

(7) The board of claims, in the event that it makes any adjustment upon a claim, may, in its discretion, require the use of such protection against the possibility of lost, stolen, or destroyed passes and registrations as it may deem proper, including, but not limited to, the posting of corporate or personal surety bonds.

(8) It is the legislative intent of subsections (2) to (7) of this section to provide in proper cases for the relief of agents where passes or registrations have been lost, stolen, or destroyed, which relief, however, shall be strictly construed, it being the further intent of such subsections to encourage the proper and careful handling of such documents by pass and registration agents.

(9) The commission may promulgate rules for the cash sale of passes and registrations to pass and registration agents of the division for resale to the public. Only agents of the division in good standing may qualify to purchase and sell under this subsection (9); except that no evidence of financial responsibility shall be required to qualify under this subsection (9). A post or base exchange of the United States government located in Colorado may qualify as an agent for the purpose of this subsection (9). Failure to comply with all applicable rules of the commission and lawful directives of the division regarding pass and registration agents constitutes grounds for the suspension or termination of such an agent, and, upon suspension or termination, all unsold passes and registrations shall be returned immediately to the division for return of cash in the amount paid by the agent for the passes and registrations. The commission, in connection with a program that it may adopt under this subsection (9), shall provide for redemption by the division, at least annually, of any unsold passes and registrations in the amount paid by the agent for such unsold passes and registrations. Subsections (1) to (8) of this section, except the provisions of subsection (1) regarding the designation of pass and registration agents, do not apply to passes and registrations sold under this subsection (9).

(10) The commission may authorize certain employees to sell passes and registrations at the headquarters and regional offices of the division. Such employees are not entitled to a discount off of the face value of the passes and registrations and are not required to give evidence of financial responsibility. Such employees may make claims under oath for relief from responsibility for passes and registrations or moneys that have been lost, stolen, or destroyed and for which the employees are unable to account in accordance with subsections (4) to (8) of this section.

(11) Any pass or registration agent who fails, upon demand of the division or its authorized representative, to account for passes and registrations or who fails to pay over

to the division or its authorized representative moneys received from the sale of passes and registrations:

(a) When the amount in question is less than two hundred dollars, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment;

(b) When the amount in question is two hundred dollars or more, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., which punishment shall include a fine in an amount set out in section 18-1.3-401 (1) (a) (III), C.R.S.

Source: **L. 84:** Entire article added, p. 894, § 2, effective January 1, 1985. **L. 85:** (11)(b) amended, p. 660, § 13, effective July 1. **L. 87:** (1), (9), and (10) amended, p. 489, § 38, effective July 1. **L. 89:** (11)(b) amended, p. 847, § 123, effective July 1. **L. 2002:** (11)(b) amended, p. 1544, § 296, effective October 1. **L. 2003:** (1), (9), and (10) amended, p. 1530, § 6, effective May 1; (11)(a) amended, p. 1944, § 12, effective May 22. **L. 2012:** (1), (9), and (10) amended, (HB 12-1317), ch. 248, p. 1223, § 51, effective June 4.

Editor's note: This section is similar to former § 33-4-112 as it existed prior to 1984.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (11)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

33-12-105. Licensing violations. (1) Except as otherwise provided in section 33-12-104, it is unlawful for any person to transfer, sell, or assign any pass or registration issued under articles 10 to 15 of this title to another person. Any person who violates this subsection (1) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of two hundred dollars.

(2) Any person who makes any false statement or gives any false information in connection with purchasing or selling a pass or registration or who makes any alteration of a pass or registration is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of two hundred dollars, and any such statement, information, or alteration shall render such pass or registration void.

(3) Any person who fails to obtain or make readily available for inspection by a parks and recreation officer or other peace officer an appropriate and valid pass is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of twenty-five dollars.

Source: **L. 84:** Entire article added, p. 897, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 970, § 14, effective July 1. **L. 2003:** Entire section amended, p. 1944, § 13, effective May 22.

33-12-106. Park entrance privileges - identified veterans - wounded warriors - search and rescue organizations conducting training activities - legislative declaration - rules. (1) Any resident who displays on the resident's vehicle a Colorado disabled veteran's license plate pursuant to section 42-3-304 (3) (a), C.R.S., shall be allowed free entrance to any state park or recreation area, not to include campgrounds, on any day of the year such park or area is open. For the purpose of this section, display of such license plates shall entitle the disabled veteran and passengers in such veteran's vehicle to enter such park or recreation area free of charge.

(2) Repealed.

(2.3) The commission may promulgate rules to allow free entrance to any state park or recreation area, not to include campgrounds, yurts, or other amenities and services offered, for veterans on one day each year. The commission may determine by rule which day veterans are allowed free entrance to state parks and recreation areas.

(2.7) (a) (I) The general assembly hereby finds, determines, and declares that:

(A) Service members returning from post-September 11, 2001, overseas contingency operations who have been injured during combat face a challenging period of rehabilitation upon their return to the United States;

(B) Many of these service members are so severely injured that they require medical assistance for many years, or even the rest of their lives, as they reenter mainstream life;

(C) Although the scope of care provided by the United States armed services wounded warrior programs varies with each service member, based on the needs of the individual, these service members may be assigned, upon return to Colorado, to a medical treatment facility such as Evans army hospital at Fort Carson, Colorado;

(D) Wounded warrior programs are direct efforts by the United States armed services to care for service members during their long transition from combat-related injury to civilian life and to provide assistance to those service members in recovery, rehabilitation, and reintegration that is worthy of their service and sacrifice; and

(E) For those wounded warriors who suffer injuries so severe that they will require intense, ongoing care or assistance for many years or the rest of their lives, a significant part of the healing process is enabling and encouraging these service members to experience some of the outdoor recreational activities they enjoyed prior to their service-related injuries.

(II) The general assembly therefore recognizes the need to provide opportunities for Colorado's severely injured "wounded warriors" to enjoy the natural resources of the state as part of their rehabilitative care. Furthermore, offering free entrance to state parks and recreation areas to such recovering service members is a small, but recognizable, acknowledgment of their selfless service and sacrifice.

(b) The commission may promulgate rules to allow free entrance to any state park or recreation area, not to include campgrounds, yurts, or other amenities or services offered, for participants in the United States armed services wounded warrior programs who are residents of, or stationed in, Colorado. Any such rules must also allow for free admission of persons accompanying the wounded warrior program participant in the same vehicle.

(c) As used in this subsection (2.7), "United States armed services wounded warrior programs" means:

(I) The Army wounded warrior (AW2) program;

(II) The Air Force wounded warrior (AFW2) program;

(III) The Navy safe harbor program;

(IV) The Coast Guard wounded warrior regiment; and

(V) Any successor program administered by a branch of the United States armed services to provide individualized support for service members who have been severely injured in overseas contingency operations undertaken since September 11, 2001.

(3) Pursuant to section 33-10-115, a public or nonprofit search and rescue organization shall be allowed free entrance to any state park or recreation area on any day of the year such park or area is open, subject to availability.

Source: **L. 87:** Entire section added, p. 1270, § 1, effective July 1. **L. 92:** Entire section amended, p. 1973, § 1, effective April 23. **L. 94:** (1) amended, p. 2566, § 80, effective January 1, 1995. **L. 97:** (2) repealed, p. 163, § 1, effective March 28. **L. 2005:** (1) amended, p. 1183, § 34, effective August 8. **L. 2009:** (3) added, (SB 09-182), ch. 148, p. 617, § 3, effective April 20. **L. 2011:** (2.3) and (2.7) added, (SB 11-024), ch. 79, p. 215, § 1, effective March 29. **L. 2012:** (2.3) and (2.7)(b) amended, (HB 12-1317), ch. 248, p. 1224, § 52, effective June 4.

33-12-107. Agreements with special districts to collect special district tolls for access road maintenance furnished by special districts. (Repealed)

Source: **L. 90:** Entire section added, p. 1538, § 1, effective June 7. **L. 95:** (2) amended, p. 971, § 15, effective July 1. **L. 2003:** Entire section repealed, p. 1944, § 14, effective May 22.

ARTICLE 12.5**Arkansas River Recreational Act**

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-12.5-101.	Short title.	property owners - water
33-12.5-102.	Legislative declaration.	rights.
33-12.5-103.	Powers of the commission.	33-12.5-105. ~ Repeal of article. (Repealed)
33-12.5-104.	Effect of article - rights of	

33-12.5-101. Short title. This article shall be known and may be cited as the “Arkansas River Recreational Act”.

Source: L. 88: Entire article added, p. 1163, § 1, effective January 1, 1989.

33-12.5-102. Legislative declaration. The general assembly recognizes that the Arkansas river is a major recreation attraction and a vital resource for residents and nonresidents alike and hereby declares that it is the policy of this state to safeguard the recreational quality of the Arkansas river and the adjacent lands by granting the commission the authority to regulate recreational use on the Arkansas river. It is not the intent of the general assembly to in any way interfere with private landowner rights along the river or with the determination, administration, or change of water rights in the drainage of the Arkansas river and its tributaries and the legal utilization thereof.

Source: L. 88: Entire article added, p. 1163, § 1, effective January 1, 1989. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1224, § 53, effective June 4.

33-12.5-103. Powers of the commission. (1) The commission has the authority, consistent with section 33-12.5-102, to regulate the manner, type, time, location, and amount of recreational and commercial use on that portion of the Arkansas river that runs from the confluence of the Lake Fork and the East Fork of the Arkansas river to the Pueblo reservoir.

(2) Subject to section 33-12.5-102, the commission also has the authority to enter into agreements with municipalities, water conservancy districts, and private individuals to effect reservoir operation in order to provide water flows beneficial to recreation and consistent with section 33-12.5-104.

(3) The commission shall, to the maximum extent possible but consistent with section 33-12.5-102, keep the regulation of the recreational uses of the Arkansas river to a minimum.

Source: L. 88: Entire article added, p. 1163, § 1, effective January 1, 1989. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1225, § 54, effective June 4.

33-12.5-104. Effect of article - rights of property owners - water rights. (1) Nothing in this article shall be construed as:

(a) Diminishing the rights of owners of property as provided in the constitution and statutes of this state or in the constitution of the United States;

(b) Modifying or amending existing laws, court decrees, or court decisions or affecting future court proceedings or decrees in any manner with respect to the determination, administration, or change of water rights;

(c) Granting the commission any vested water rights or right to apply for or obtain any decree for a water right for recreational purposes;

(d) Prohibiting or in any way regulating the construction, modification, rehabilitation, or operation of reservoirs, diversion structures, or other facilities necessary for the storage,

diversion, or conveyance of water in the drainage of the Arkansas river and its tributaries as otherwise permitted by law;

(e) Superseding, abrogating, or impairing rights to divert water and apply water to beneficial uses in accordance with sections 5 and 6 of article XVI of the Colorado constitution, the provisions of articles 80 to 93 of title 37, C.R.S., or Colorado court decisions with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights. The question of whether such material injury to water rights exists and the remedy thereof shall be determined by the water court.

(f) Allowing the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

Source: **L. 88:** Entire article added, p. 1164, § 1, effective January 1, 1989. **L. 2012:** (1)(c) and (1)(f) amended, (HB 12-1317), ch. 248, p. 1225, § 55, effective June 4.

33-12.5-105. Repeal of article. (Repealed)

Source: **L. 88:** Entire article added, p. 1164, § 1, effective January 1, 1989. **L. 91:** Entire section amended, p. 1438, § 1, effective April 17. **L. 97:** Entire section repealed, p. 90, § 1, effective March 24.

ARTICLE 13

Vessels

Editor's note: This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 31 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-13-101.	Legislative declaration.	33-13-108.3.	Records to be kept by the division.
33-13-102.	Definitions.	33-13-109.	Collisions, accidents, and casualties - rules.
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33-13-108.1.	Operating a vessel while under the influence.	33-13-116.	Repeal of sections.
33-13-108.2.	Operating a vessel while the privilege to operate is suspended.		

33-13-101. Legislative declaration. It is the policy of this state to administer the registration and numbering of vessels in accordance with federal laws pertaining thereto and to promote the safety of persons and property in connection with the use, operation, and equipment of vessels.

Source: **L. 84:** Entire article added, p. 897, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-31-101 as it existed prior to 1984.

33-13-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Motorboat” means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion including “personal watercraft” as defined in subsection (3.3) of this section.

(2) “Operate” means to navigate or otherwise use a vessel.

(3) “Owner” means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest which entitles him to such possession.

(3.3) “Personal watercraft” means a motorboat that uses an inboard motor powering a water jet pump as its primary source of motive power and is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. “Personal watercraft” includes a motorboat known as a “specialty prop-craft”, which is similar in appearance to a personal watercraft but powered by an outboard or motor driven propeller.

(3.7) “Sailboard” means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast, not secured to a hull by guys or stays.

(4) “Sailboat” means any vessel propelled by the effect of wind on a sail, including sailboards. For the purposes of this article, any vessel propelled by both sail and machinery of any sort shall be deemed a motorboat, when being so propelled.

(5) “Vessel” means every description of watercraft used or capable of being used as a means of transportation of persons and property on the water, other than single-chambered air-inflated devices or seaplanes.

(5.5) “Vessel staging area” means any parking lot, boat ramp, or other location that any vessel is transported to or from by a motor vehicle and where such vessel is placed into operation on or in the water. “Vessel staging area” does not include any location to which a vessel is transported primarily for the purpose of service, maintenance, repair, or sale.

(6) “Whitewater” means natural running water with intermittent rapids.

Source: **L. 84:** Entire article added, p. 897, § 2, effective January 1, 1985. **L. 88:** (4) amended, p. 1165, § 1, effective March 16. **L. 93:** (3.7) added, p. 1836, § 1, effective July 1. **L. 97:** (1) amended and (3.3) added, p. 1604, § 1, effective June 4. **L. 2003:** (5.5) added, p. 1945, § 15, effective May 22.

Editor’s note: This section is similar to former § 33-31-102 as it existed prior to 1984.

33-13-103. Numbering of vessels required - rules. (1) It is unlawful for any person to operate or use a vessel on the waters of this state or to possess a vessel at a vessel staging area unless the vessel has been numbered and a certificate of the number, referred to in this article as a “registration”, has been issued to the vessel by the division. The operator of the vessel shall produce the registration for inspection upon demand of any officer authorized to enforce articles 10 to 15 and 32 of this title. The following are exempt from the requirements of this subsection (1) and from the vessel registration fee as specified pursuant to section 33-10-111 (5):

(a) Any vessel which is neither a motorboat nor a sailboat as defined in section 33-13-102; except that canoes, kayaks, and nonmotorized rafts exempted by this paragraph (a) shall be marked as required by subsection (5) of this section;

(b) Vessels holding a valid marine document issued by the United States;

(c) Vessels which are numbered in accordance with applicable federal law or in accordance with a federally approved numbering system of another state when the registration is valid and the identifying number set forth in the registration is displayed on each side of the bow of such vessel, which vessel is not used within this state during a period of not more than sixty consecutive days;

(d) A vessel from a country other than the United States temporarily using the waters of this state;

(e) A vessel belonging to a class of vessels which has been exempted after the division has found that the numbering of vessels of such class will not materially aid their identification, and, if an agency of the federal government has a numbering system applicable to the class of vessels to which the vessel in question belongs, after the division

has further found that the vessel would also be exempt from numbering if it were subject to federal law;

(f) Any vessel defined as a sailboard in section 33-13-102 (3.7) shall be marked as required by subsection (5) of this section.

(2) Every registration issued pursuant to this article shall continue in full force and effect for a period ending December 31 of the year of issuance of the registration unless sooner terminated or discontinued in accordance with the provisions of this article. A registration may be renewed by the owner in the same manner as that provided for obtaining the initial registration. The same number shall be reissued if the application for renewal is received by the division within thirty days before the date of expiration.

(3) The commission shall prescribe by rule a system of numbering that complies with the federal system for numbering vessels.

(4) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(5) It is unlawful for any person to operate or use a canoe, kayak, sailboard, or nonmotorized raft which is not required to be registered under subsection (1) of this section on the waters of this state unless it has been marked with the owner's name and current address in a legible, clearly visible, and durable fashion. Any person who violates this subsection (5) is guilty of a petty offense and, upon conviction thereof, shall be punished by a fine of fifteen dollars.

Source: L. 84: Entire article added, p. 897, § 2, effective January 1, 1985. L. 88: (1)(a) and (5) amended, p. 1165, §§ 2, 3, effective March 16. L. 93: (1)(f) added and (5) amended, p. 1836, §§ 2, 3, effective July 1. L. 95: IP(1) and (4) amended, p. 967, § 5, effective July 1. L. 96: IP(1) amended, p. 782, § 5, effective May 23. L. 2003: IP(1) and (4) amended, p. 1945, § 16, effective May 22. L. 2011: IP(1) and (1)(b) amended, (SB 11-092), ch. 182, p. 694, § 4, effective May 19. L. 2012: (3) amended, (HB 12-1317), ch. 248, p. 1225, § 56, effective June 4.

Editor's note: (1) This section is similar to former § 33-31-103 as it existed prior to 1984.

(2) This section is repealed, effective September 1, 2016, pursuant to the provisions of § 33-13-116.

ANNOTATION

Applied in *People v. Boyd*, 642 P.2d 1 (Colo. 1982).

33-13-104. Application for vessel number. (1) The owner of each vessel requiring numbering by this state shall file an application for a number with the division or any representative approved by the division on forms approved and furnished by the division. The application shall be signed by the owner of the vessel and shall be accompanied by a fee as specified pursuant to section 33-10-111 (5); except that those vessels owned and operated by the state or any political subdivision thereof shall be registered without payment of a registration fee. Upon receipt of the application in approved form, the division or its representative shall issue to the applicant a registration stating the number issued to the vessel. The number issued shall be painted on or attached to each side of the bow on the forward half of the vessel or, if there are no such sides, at a corresponding location on both sides of the foredeck of the vessel for which it is issued. The number issued shall read from left to right in block characters of good proportion having a minimum of three inches in height, excluding border or trim, and of a color that contrasts with the color of the background, and so maintained as to be clearly visible and legible. No other number shall be carried on the bow of the vessel. Any person who fails to display a vessel number as required in this subsection (1) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of twenty-five dollars.

(2) The registration shall be of pocket size and shall be on board and available at all times for inspection whenever the vessel for which it is issued is in operation in this state.

Any person who violates this subsection (2) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars. If a registration is lost or destroyed, the owner shall, within fifteen days, notify the division. The notification shall be in writing, shall describe the circumstances of the loss or destruction, and shall be accompanied by a fee for a replacement registration as required under section 33-12-101.

(3) When a numbered vessel is lost, destroyed, or abandoned, the registration issued for the vessel shall be surrendered to the division within fifteen days after any such event. When the owner of a numbered vessel changes his or her address from that shown on the registration, the owner shall notify the division within fifteen days of such change and, as a part of such notification, shall furnish the division with his or her new address. The commission may provide in its rules for the surrender of the registration bearing the former address and its replacement with a registration bearing the correct address or for the alteration of an outstanding registration to show the new address of the owner.

(4) All fees collected under this section shall be credited to the parks and outdoor recreation cash fund and shall be used for the administration of this article.

Source: **L. 84:** Entire article added, p. 898, § 2, effective January 1, 1985. **L. 95:** (1) and (2) amended, p. 971, § 16, effective July 1. **L. 96:** (1) amended, p. 782, § 6, effective May 23. **L. 2003:** (1) and (2) amended, p. 1945, § 17, effective May 22. **L. 2012:** (3) amended, (HB 12-1317), ch. 248, p. 1225, § 57, effective June 4.

Editor's note: (1) This section is similar to former § 33-31-104 as it existed prior to 1984.

(2) This section is repealed, effective September 1, 2016, pursuant to the provisions of § 33-13-116.

33-13-105. Seizure of vessels by officers. (1) (a) Every parks and recreation officer and other peace officer of this state may seize and hold any vessel if such officer has probable cause to believe that the vessel is not in the lawful possession of the operator or person in charge thereof.

(b) It is the duty of any officer seizing any vessel, on being informed of any such vessel, to immediately notify the appropriate law enforcement agencies and the owner if known. Such notification shall contain a description of such vessel and any other helpful facts that may assist in locating or establishing the ownership thereof or in prosecuting any person for a violation of article 4 of title 18, C.R.S., or other state laws.

(2) "Hull identification number" means any identifying number, serial number, engine number, or other distinguishing number or mark, including letters, if any, placed on a vessel or engine by its manufacturer or by authority of the division or in accordance with the laws of another state or country, excluding the vessel registration number.

(3) (a) Whenever a vessel is seized pursuant to subsection (1) of this section, the law enforcement agency or a governmental entity may commence an action in a court of competent jurisdiction to determine whether said vessel shall be destroyed, sold, converted to the use of the seizing agency, or otherwise disposed of by an order of said court.

(b) (I) Any forfeiture proceeding initiated pursuant to this section shall be conducted in conformance with section 16-13-505, C.R.S.

(II) For purposes of applying section 16-13-505, C.R.S., to a seizure hearing conducted pursuant to this section, "contraband" includes any vessel seized in accordance with this section.

(4) Nothing in this section shall preclude the return of the seized vessel to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, requiring the owner to obtain an assignment of a hull identification number for the vessel from the division.

(5) and (6) (Deleted by amendment, L. 96, p. 725, § 1, effective January 1, 1997.)

(7) If the court having jurisdiction orders the vessel sold by the division, the proceeds of the sale shall be forwarded to the treasurer who shall credit such proceeds to the general fund.

Source: **L. 84:** Entire article added, p. 899, § 2, effective January 1, 1985. **L. 96:** Entire section amended, p. 725, § 1, effective January 1, 1997.

Editor's note: This section is repealed, effective September 1, 2016, pursuant to the provisions of § 33-13-116.

33-13-106. Equipment requirements. (1) No person shall operate a personal watercraft unless each person aboard is wearing a personal flotation device of a type approved by the United States Coast Guard that is in a good and serviceable condition.

(2) A person operating a personal watercraft equipped by the original manufacturer with an engine cutoff switch lanyard shall attach such lanyard to his or her person, clothing, or personal flotation device, as appropriate for the specific vessel.

(3) Every vessel, other than a personal watercraft, operated on the waters of this state shall at all times have aboard:

(a) One personal flotation device of a type approved by the commandant of the United States Coast Guard in good and serviceable condition and in a readily accessible place of storage for each person on board; except that sailboard operators may wear a wet suit, as defined by the commission, in lieu of carrying a personal flotation device as required by this paragraph (a);

(b) When in operation during hours of darkness, a light sufficient to make the vessel's presence and location known to any and all other vessels within a reasonable distance;

(c) If not an entirely open vessel and if carrying or using any inflammable or toxic fluid in any enclosure for any purpose, an efficient natural or mechanical ventilation system which shall be capable of removing any resulting gases prior to and during the time such vessel is occupied by any person.

(4) Every vessel operated on the waters of this state shall have such additional equipment that is designed to promote navigational safety and that the commission may find to be necessary or desirable for the safe operation of vessels upon the waters of this state.

(4.5) No person shall operate a vessel that has entered the water unless each child under the age of thirteen who is aboard such vessel is wearing a personal flotation device, unless such child is below deck or in an enclosed cabin. Such flotation device shall be of a type approved by the United States Coast Guard and shall be in good and serviceable condition.

(5) Any person who violates subsection (1), (2), (3), (4), or (4.5) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(6) The commission may exempt vessels from subsection (1), (2), (3), (4), or (4.5) of this section under certain conditions or upon certain waters.

Source: **L. 84:** Entire article added, p. 901, § 2, effective January 1, 1985. **L. 93:** (1)(a) amended, p. 1837, § 4, effective July 1. **L. 95:** (2) amended, p. 972, § 17, effective July 1. **L. 97:** Entire section amended, p. 1604, § 2, effective June 4. **L. 2003:** (4.5) added and (5) and (6) amended, p. 1946, § 18, effective May 22. **L. 2012:** (3)(a), (4), and (6) amended, (HB 12-1317), ch. 248, p. 1226, § 58, effective June 4.

Editor's note: This section is similar to former § 33-31-105 as it existed prior to 1984.

33-13-107. Vessel liveries. (1) The owner or operator of a vessel livery shall keep a record of the name and address of each person who hires any vessel that is designed or permitted to be operated as a vessel, the identification number of such vessel, and the departure date and time and the expected date and time of return of such vessel. Such records shall be preserved for at least thirty days after such vessel is to be returned and shall be subject to inspection by the division. Any person who violates this subsection (1) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(2) Neither the owner or operator of a vessel livery nor such owner's or operator's agent or employee shall permit any vessel to depart from his or her premises unless such vessel is equipped and registered as required by this article and rules promulgated pursuant

to this article. Any person who violates this subsection (2) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

Source: L. 84: Entire article added, p. 901, § 2, effective January 1, 1985. **L. 95:** (2) amended, p. 972, § 18, effective July 1. **L. 2003:** Entire section amended, p. 1946, § 19, effective May 22.

Editor's note: (1) This section is similar to former § 33-31-106 as it existed prior to 1984.

(2) This section is repealed, effective September 1, 2016, pursuant to the provisions of § 33-13-116.

33-13-107.1. Minimum age of motorboat operators - youth education. (1) No person under sixteen years of age shall operate a motorboat in this state except as provided in this section.

(2) A person fourteen years of age or older who has not reached his or her sixteenth birthday may operate a motorboat only if he or she:

(a) Completes a boating safety course approved by the division of parks and wildlife; and

(b) Has a boating safety certificate issued by the boating safety course provider in his or her possession.

(3) No person shall permit or knowingly authorize a motorboat to be operated by a person under sixteen years of age; except that a person fourteen years of age or older who has not reached his or her sixteenth birthday may be permitted or authorized to operate a motorboat if he or she has met the boating safety and certificate requirements of subsection (2) of this section.

(4) No owner or operator of a vessel livery or an agent or employee of such owner or operator shall lease, hire, or rent a motorboat to or for operation by any person under sixteen years of age; except that a person fourteen years of age or older who has not reached his or her sixteenth birthday may be permitted or authorized to operate a motorboat if he or she has met the boating safety and certificate requirements of subsection (2) of this section.

(5) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of fifty dollars.

(6) It is the intent of the general assembly that no general fund dollars be appropriated for the purpose of implementing the requirements of this section.

Source: L. 97: Entire section added, p. 1605, § 3, effective January 1, 1998.

33-13-108. Prohibited vessel operations - rules. (1) (a) No person shall operate or give permission for the operation of a vessel:

(I) Which is not equipped as required by this article or rules and regulations promulgated pursuant thereto;

(II) Which emits noise in excess of the permissible level established in standards promulgated by the commission in accordance with article 4 of title 24, C.R.S.;

(III) Above a wakeless speed in areas zoned as wakeless, as defined by commission rule;

(IV) In a manner that violates any rule promulgated by the commission for safe use and operation of vessels.

(a.5) No person shall operate a personal watercraft between one half hour after sunset and one half hour before sunrise.

(b) Any person who violates paragraph (a) or (a.5) of this subsection (1) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of fifty dollars.

(2) (a) It is unlawful for any person to operate a vessel in a careless or imprudent manner without due regard for zoning, traffic, and other attendant circumstances or as to endanger any person, property, or wildlife. For purposes of this paragraph (a), careless or imprudent vessel operation includes, but is not limited to, the following:

(I) Becoming airborne or completely leaving the water while crossing the wake of another vessel at an unsafe distance from the vessel creating the wake or when visibility around such vessel is obstructed;

(II) Unsafely weaving through vessel traffic;

(III) Operating at such a speed and proximity to another vessel so as to require the operator of either vessel to abruptly swerve or to abruptly cut speed in order to avoid collision.

(b) Any person who violates paragraph (a) of this subsection (2) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars.

(3) It is unlawful for any person to operate a vessel in a reckless manner. Any person who violates this subsection (3) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(4) Repealed.

Source: **L. 84:** Entire article added, p. 902, § 2, effective January 1, 1985. **L. 89:** (4) amended, p. 1359, § 2, effective July 1. **L. 95:** (1)(b) and (2) amended, p. 972, § 19, effective July 1. **L. 97:** (1)(a)(IV) and (1)(a.5) added and (1)(b), (2), and (3) amended, p. 1606, §§ 4, 5, effective June 4. **L. 2003:** (3) and (4) amended, p. 1947, § 20, effective May 22. **L. 2008:** (4) repealed, p. 645, § 1, effective August 5. **L. 2012:** (1)(a)(II), (1)(a)(III), and (1)(a)(IV) amended, (HB 12-1317), ch. 248, p. 1226, § 59, effective June 4.

Editor's note: This section is similar to former § 33-31-107 as it existed prior to 1984.

ANNOTATION

Applied in *People v. Boyd*, 642 P.2d 1 (Colo. 1982).

33-13-108.1. Operating a vessel while under the influence. (1) (a) It is a misdemeanor for any person to operate or be in actual physical control of a vessel in this state while:

(I) Under the influence of alcohol;

(II) The amount of alcohol, as shown by analysis of the person's blood or breath, in the person's blood is 0.08 or more grams of alcohol per one hundred milliliters of blood or 0.08 or more grams of alcohol per two hundred ten liters of breath at the time of the commission of the alleged offense or within two hours after operating a vessel, if the evidence establishes beyond a reasonable doubt that the person did not consume any alcohol between the time of operation and the time of testing;

(III) Under the influence of any controlled substance as defined in section 18-18-102 (5), C.R.S., or any other drug that renders the person incapable of safely operating a vessel;

(IV) Under the influence of any combination of alcohol and any controlled substance as defined in section 18-18-102 (5), C.R.S., or any other drug, when the combination of alcohol and controlled substance or any other drug renders the person incapable of safely operating a vessel.

(b) For the purposes of this subsection (1), "under the influence of any controlled substance or any other drug" shall include the use of glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor.

(2) (a) In any prosecution of a violation of paragraph (a) of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following presumption: If there was at that time 0.08 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of the person's blood or 0.08 or more grams of alcohol per two

hundred ten liters of breath as shown by analysis of the person's breath, it shall be presumed that the defendant was under the influence of alcohol.

(b) The limitation of this subsection (2) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol.

(3) In any prosecution for a violation of subsection (1) of this section, the defendant shall be entitled to offer direct and circumstantial evidence to show that there is a disparity between what the tests show and other facts so that the trier of fact could infer that the tests were in some way defective or inaccurate. Such evidence may include testimony of nonexpert witnesses relating to the absence of any or all of the common symptoms or signs of intoxication for the purpose of impeachment of the accuracy of the analysis of the person's blood or breath.

(4) (a) A person who operates a vessel or who is in actual physical control of a vessel on the waters of this state shall be deemed to have expressed consent to the provisions of this subsection (4).

(b) Any person who operates or is in actual physical control of a vessel on the waters of this state may be required to submit to a test or tests of breath or blood for the purpose of determining the alcoholic content of the person's blood or breath if arrested for any misdemeanor offense arising out of acts alleged to have been committed while the person was operating a vessel in violation of subsection (1) of this section. If the person requests that the test be a blood test, then the test shall be of the person's blood; but, if the person requests that a specimen of blood not be drawn, then a specimen of the person's breath shall be obtained and tested.

(c) Any person who operates or is in actual physical control of a vessel on the waters of this state may be required to submit to a test or tests of the person's blood, saliva, and urine for the purpose of determining the drug content within the person's system if arrested for any misdemeanor offense arising out of acts alleged to have been committed while the person was operating a vessel in violation of subsection (1) of this section.

(5) Any person who is required to submit to testing or who requests that a specimen of blood, breath, saliva, or urine be taken or drawn shall cooperate with the person authorized to obtain the specimens, including the signing of any release forms required by any person who is authorized to take or withdraw such specimens. If the person refuses to sign any release forms, the refusal shall be considered a refusal to take the tests, if said forms conform to subsection (6) of this section. No peace officer shall physically restrain any person for the purpose of obtaining a specimen of his blood, breath, saliva, or urine for testing.

(6) The arresting officer having probable cause to believe a person has violated this section shall direct the administration of the tests in accordance with rules prescribed by the state board of health with utmost respect for the constitutional rights, dignity, and health of the person being tested. No person except a physician, a registered nurse, a paramedic as certified in part 2 of article 3.5 of title 25, C.R.S., an emergency medical service provider as defined in part 1 of article 3.5 of title 25, C.R.S., or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall withdraw blood to determine the alcoholic or drug content of the blood for purposes of this section. No civil liability attaches to a person authorized to obtain blood, breath, saliva, or urine specimens or to a hospital in which the specimens are obtained as provided in subsection (4) of this section as a result of the act of obtaining the specimens from any person submitting thereto if the specimens were obtained according to the rules of the state board of health; except that this provision does not relieve the person from liability for negligence in obtaining a specimen sample.

(7) Any person who is dead or unconscious shall be tested to determine the alcoholic content of the person's blood as provided in subsection (4) of this section. In addition to the tests prescribed, the blood of a dead person shall be checked for carbon monoxide content and for the presence of drugs, as prescribed by the department of public health and environment. All information obtained will be made a part of the accident report.

(8) If a person refuses to submit to tests as provided for in subsection (4) of this section and the person subsequently stands trial for a violation of subsection (1) of this section, the

refusal to submit to the tests shall be admissible into evidence at the trial, and a person may not claim the privilege against self-incrimination with regard to admission of refusal to submit to any tests.

(9) The fact that any person charged with a violation of subparagraph (II) or (III) of paragraph (a) of subsection (1) of this section is or has been entitled to use the controlled substance or drug under the laws of this state shall not constitute a defense against any person charged with the violation.

(10) No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related boating offense from a person charged with a violation of subsection (1) of this section unless the prosecuting attorney makes a good faith representation that a prima facie case could not be established if the defendant were brought to trial on the original alcohol-related or drug-related offense.

(11) When a peace officer has reasonable grounds to believe that a person is operating a vessel while under the influence of alcohol or that the operator has been involved in a boating accident resulting in injury or death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test. The test shall be given using a device approved by the executive director of the department of public health and environment as being accurate to within ten percent of the actual reading obtained by the officer upon administering the test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to administer a test pursuant to paragraph (b) of subsection (4) of this section but shall not be used in any court action except to prove that a test was properly authorized pursuant to this section. The results of the test shall be made available to the operator or the operator's attorney upon request. The preliminary screening test shall not constitute the test for the purposes of subsection (4) of this section.

(12) (a) Every person who is convicted of a violation of subsection (1) of this section shall be punished by imprisonment in the county jail for not less than five days nor more than one year, and, in addition, the court may impose a fine of not less than two hundred dollars nor more than one thousand dollars. Except as provided in paragraph (c) of this subsection (12), the minimum period of imprisonment provided for the violation shall be mandatory. In addition to any other penalty that is imposed, every person who is convicted of a violation to which this paragraph (a) applies shall perform no more than ninety-six hours of useful public service.

(b) Upon a conviction of a subsequent violation of subsection (1) of this section that occurred within five years of the date of a previous violation of subsection (1) of this section, the offender shall be punished by imprisonment in the county jail for not less than sixty days nor more than one year, and, in addition, the court may impose a fine of not less than five hundred dollars nor more than one thousand five hundred dollars. The minimum period of imprisonment as provided for the violation shall be mandatory, but the court may suspend up to fifty-five days of the period of imprisonment if the offender complies with paragraph (c) of this subsection (12). In addition to any other penalty that is imposed, every person convicted of a violation to which this paragraph (b) applies shall perform not less than sixty hours nor more than one hundred twenty hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of the service.

(c) The sentence of any person subject to paragraph (a) or (b) of this subsection (12) may be suspended to the extent provided for in said paragraphs if the offender receives a presentence alcohol and drug evaluation and, based on that evaluation, if the offender satisfactorily completes an appropriate level I or level II alcohol and drug driving safety education or treatment program and abstains from the use of alcohol for a period of one year from the date of sentencing. The abstinence shall be monitored by the treatment facility by the administration of disulfiram or by any other means that the director of the treatment facility deems appropriate. If, at any time during the one-year period, the offender does not satisfactorily comply with the conditions of the suspension, that sentence shall be reimposed, and the offender shall spend that portion of the sentence that was suspended in the county jail.

(d) In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for the purposes of treatment not to exceed two years.

(e) For the purposes of this subsection (12), “useful public service” has the meaning set forth in section 42-4-1301.4, C.R.S., and the useful public service program authorized therein shall be utilized for the purposes of this subsection (12). An offender sentenced to a useful public service program shall complete the same within the time established by the court. In addition to any other penalties, fines, fees, or costs prescribed in this section, the court shall assess an amount not to exceed the amount established in section 42-4-1301.4, C.R.S., upon any person required to perform useful public service. The amount shall be used only to pay for the costs authorized in section 42-4-1301.4, C.R.S.

(f) For the purposes of this subsection (12), “alcohol and drug driving safety education or treatment” has the meaning set forth in section 42-4-1301.3, C.R.S., and the alcohol and drug driving safety program and the presentence alcohol and drug evaluations authorized in said section shall be utilized for the purposes of this subsection (12). The presentence alcohol and drug evaluation shall be conducted on all persons convicted of a violation of subsection (1) of this section; except that this requirement shall not apply to persons who are not residents of Colorado at the time of sentencing. Any defendant sentenced to level I or level II education or treatment programs shall be instructed by the court to meet all financial obligations of the programs. If the financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant’s sentence. In addition to any other penalties, fines, fees, or costs prescribed in this section, the court shall assess an amount, not to exceed the amount established in section 42-4-1301.3, C.R.S., upon any person convicted of a violation of subsection (1) of this section. The amount shall be used only to pay for the costs authorized in section 42-4-1301.3, C.R.S. The court shall consider the alcohol and drug evaluation prior to sentencing. This paragraph (f) is also applicable to any defendant who receives a deferred prosecution in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S.

(g) Upon a conviction for a first offense for a violation of subsection (1) of this section, in addition to any other penalties, fines, fees, or costs imposed, the court shall order the person to not operate a vessel for a three-month period. Upon a conviction for a subsequent offense for a violation of subsection (1) of this section, in addition to any other penalties, fines, fees, or costs imposed, the court shall order the person to not operate a vessel for a one-year period. For the purposes of this paragraph (g), “conviction” includes a conviction in any court of record or municipal court, a plea of no contest accepted by the court, or the forfeiture of any bail or collateral deposited to secure a defendant’s appearance in court or the failure to appear in court by a defendant charged with a violation of subsection (1) of this section who has been issued a summons and complaint to appear pursuant to section 33-15-102 (2).

(h) Upon a plea of guilty or a verdict of guilty by the court or a jury to any offense specified in subsection (1) of this section, the court shall order the defendant to immediately report to the sheriff’s department in the county where the defendant was convicted. At that time, the defendant’s fingerprints and photographs shall be taken and returned to the court, which fingerprints and photographs shall become a part of the court’s official documents and records pertaining to the defendant’s conviction and the defendant’s identification in association with the conviction. In any trial for a violation of any of the offenses specified in subsection (1) of this section, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the party indicted or informed against shall be prima facie evidence of the convictions and may be used in evidence against the party. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or are part of the record at the place of the party’s incarceration after sentencing for any of such former convictions and judgments shall be prima facie evidence of the identity of the party and may be used in evidence against the party. Any person who fails to immediately comply with the court’s order to report to the sheriff’s department, to furnish fingerprints, or to have photographs taken may be held in contempt of court.

(13) (a) No owner or operator of a vessel shall knowingly authorize the vessel to be operated by or come under the actual physical control of any other person if the person is under the influence of alcohol, a controlled substance or any other drug, or any combination of alcohol, controlled substance, or drug.

(b) Any person who is convicted of a violation of paragraph (a) of this subsection (13) is guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not less than two hundred dollars nor more than one thousand dollars, or by both fine and imprisonment.

(14) In all actions, suits, and judicial proceedings in any court of this state concerning alcohol-related or drug-related vessel offenses, the court shall take judicial notice of methods of testing a person's alcohol or drug level and of the design and operation of devices, as certified by the department of public health and environment, for testing a person's blood, breath, saliva, or urine to determine the alcohol or drug level. This subsection (14) shall not prevent the necessity of establishing during a trial that the testing devices used were in proper working order and that the testing devices were properly operated. Nothing in this subsection (14) shall preclude a defendant from offering evidence of the accuracy of the testing device.

(15) As used in this section, "convicted" includes a plea of no contest accepted by the court.

(16) (a) Upon conviction or plea of no contest to a violation of this section, the court shall forward a certified copy of the conviction or plea to the division.

(b) When a peace officer requests a person to submit to tests as required by subsection (4) of this section and the person refuses to submit to the tests, the officer shall forward to the division a verified report of all relevant information, including information that adequately identifies the person and a statement of the officer's probable cause for requesting the person to submit to the tests.

Source: **L. 89:** Entire section added, p. 1352, § 1, effective July 1. **L. 94:** (7), (11), and (14) amended, p. 2803, § 570, effective July 1; (12)(e) and (12)(f) amended, p. 2566, § 81, effective January 1, 1995. **L. 2002:** (12)(e) and (12)(f) amended, p. 1920, § 13, effective July 1; (12)(f) amended, p. 1545, § 297, effective October 1. **L. 2003:** (12)(a) and (13)(b) amended, p. 1947, § 21, effective May 22. **L. 2008:** Entire section amended, p. 645, § 2, effective August 5. **L. 2012:** (1)(a)(III) and (1)(a)(IV) amended, (HB 12-1311), ch. 281, p. 1630, § 82, effective July 1; (6) amended, (HB 12-1059), ch. 271, p. 1438, § 23, effective July 1.

Editor's note: (1) Amendments to subsection (12)(f) by House Bill 02-1046 and Senate Bill 02-057 were harmonized.

(2) Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (6) applies to acts committed on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (12)(f), see section 1 of chapter 318, Session Laws of Colorado 2002.

33-13-108.2. Operating a vessel while the privilege to operate is suspended.

(1) Any person who operates a vessel in this state at a time when a court-ordered suspension of the operator's vessel operating privilege is in effect for a conviction of an alcohol- or drug-related operating offense pursuant to section 33-13-108.1 (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than three days nor more than one hundred eighty days and, in the discretion of the court, by a fine of not less than three hundred dollars nor more than one thousand dollars. Upon a subsequent conviction, the person shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than three thousand dollars. The minimum jail sentence imposed by this subsection (1) shall be mandatory, and the court shall not grant probation or a suspended sentence. However, in a case where the defendant is convicted and it is established that it was necessary to operate

the vessel in violation of this subsection (1) because of an emergency, the mandatory jail sentence shall not apply, and, for a conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and, for a subsequent conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(2) In any trial in which a person is charged with a violation of subsection (1) of this section, a duly authenticated copy of the record of former convictions and judgments of any court of record against the party indicted or informed against for an alcohol- or drug-related vessel operating offense pursuant to section 33-13-108.1 shall be prima facie evidence of the convictions and judgments and may be used in evidence against the party. Identification photographs and fingerprints that are part of the record of such former convictions and judgments and the party's incarceration after sentencing for any of such former convictions and judgments shall be prima facie evidence of the identity of the party and may be used in evidence against the party.

(3) Upon a subsequent conviction under subsection (1) of this section within five years after the first conviction, in addition to the penalty prescribed in said subsection (1), the court shall order the defendant to not operate a vessel in this state for a period of two years after the subsequent conviction.

(4) Upon conviction of or a plea of no contest to a violation of this section, the court shall forward a certified copy of the conviction or plea to the division.

Source: L. 89: Entire section added, p. 1358, § 1, effective July 1. **L. 2008:** Entire section amended, p. 651, § 3, effective August 5.

33-13-108.3. Records to be kept by the division. The division shall file all abstracts of court records of convictions of violations of sections 33-13-108.1 and 33-13-108.2 and shall maintain a suitable alphabetical index for such file.

Source: L. 89: Entire section added, p. 1359, § 1, effective July 1.

33-13-109. Collisions, accidents, and casualties - rules. (1) The operator of a vessel involved in a collision, accident, or other casualty shall, so far as he can do so without serious danger to his own vessel, crew, and passengers, if any, render to other persons affected by the collision, accident, or casualty such assistance as may be practicable and necessary in order to save them from or to minimize any danger caused by the collision, accident, or other casualty, and he shall give his name and address and the identification of his vessel, including the name and address of the owner if different from that of the operator, in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(2) The commission shall adopt rules concerning notification and reporting procedures to be followed in the case of a collision, accident, or other casualty involving a vessel or its equipment. The regulations must be consistent with applicable federal requirements.

(3) The owner or operator of a vessel involved in a collision, accident, or other casualty shall report the collision, accident, or casualty as provided in the rules of the commission.

(4) and (5) (Deleted by amendment, L. 2003, p. 1947, § 22, effective May 22, 2003.)

(6) Any person who violates subsection (1) or (3) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of seventy-five dollars.

Source: L. 84: Entire article added, p. 902, § 2, effective January 1, 1985. **L. 95:** (6) amended, p. 972, § 20, effective July 1. **L. 2003:** (4) to (6) amended, p. 1947, § 22, effective May 22. **L. 2012:** (2) and (3) amended, (HB 12-1317), ch. 248, p. 1226, § 60, effective June 4.

Editor's note: This section is similar to former § 33-31-108 as it existed prior to 1984.

33-13-110. Water skis, aquaplanes, surfboards, inner tubes, and similar devices - rules. (1) (a) No person shall operate or manipulate any vessel, towrope, or other device by which the direction, speed, or location of water skis, an aquaplane, a surfboard, an inner tube, or any similar device may be affected or controlled in such a way as to cause such device or any person thereon to collide with or strike against any object or person.

(b) No person shall operate, manipulate, or ride water skis, an aquaplane, a surfboard, an inner tube, or any similar device towed behind a vessel in a careless or imprudent manner without due regard for other traffic and all other attendant circumstances on the water.

(c) Any person who violates this subsection (1) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(2) (a) Any person on water skis, an aquaplane, a surfboard, an inner tube, or any similar device shall wear a personal flotation device.

(b) The commission shall promulgate such rules as are necessary or desirable for the safe use of water skis, aquaplanes, surfboards, inner tubes, and other similar devices.

(c) In addition, the commission may promulgate rules to prohibit recreational activities pertaining to the use of all single-chambered air-inflated devices, including inner tubes and air mattresses, on rivers and streams when water conditions are considered dangerous to such activities and when bodily injury may result to participants of those activities.

(d) Any person who violates this subsection (2) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(3) (a) No person shall operate, manipulate, or ride water skis, an aquaplane, a surfboard, an inner tube, or any similar device while under the influence of alcohol, a controlled substance as defined in section 18-18-102 (5), C.R.S., or any other drug, or any combination thereof, which renders the person incapable of the safe operation of such device.

(b) Any person who violates this subsection (3) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: **L. 84:** Entire article added, p. 903, § 2, effective January 1, 1985. **L. 95:** (1)(c) and (2)(d) amended, p. 972, § 21, effective July 1. **L. 2003:** (1)(c), (2)(d), and (3)(b) amended, p. 1948, § 23, effective May 22. **L. 2012:** (2)(b) and (2)(c) amended, (HB 12-1317), ch. 248, p. 1227, § 61, effective June 4; (3)(a) amended, (HB 12-1311), ch. 281, p. 1630, § 83, effective July 1.

Editor's note: This section is similar to former § 33-31-109 as it existed prior to 1984.

ANNOTATION

Negligence per se. This section was used as the basis for a negligence per se jury instruction.

Russo v. Birrenkott, 770 P.2d 1335 (Colo. App. 1988).

33-13-111. Authority to close waters - rules. (1) (a) The commission shall promulgate rules to prohibit the operation of vessels on any waters of the state and ordering the removal of vessels from any waters of the state when such operation constitutes or may constitute a hazard to human life or safety.

(b) For purposes of this subsection (1), "vessels" shall not include whitewater canoes and kayaks except in the case of:

(I) A state of disaster emergency pursuant to section 24-32-2104 or 24-32-2109, C.R.S.;

(II) Disaster relief efforts that are underway and that may include debris removal;

(III) An accident or other emergency that occurs in or immediately adjacent to the water body;

(IV) Rescue efforts for victims that are actively underway and such efforts would be hindered by additional waterway traffic; or

(V) Active construction or transportation projects authorized under state or federal law.

(2) Any parks and recreation officer or other peace officer as defined in section 33-10-102 has the authority to enforce this section under the rules promulgated by the commission.

(3) Any person who fails to obey an order issued under this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

Source: **L. 84:** Entire article added, p. 904, § 2, effective January 1, 1985. **L. 95:** (3) amended, p. 973, § 22, effective July 1. **L. 2003:** (1) and (3) amended, p. 1948, § 24, effective May 22. **L. 2012:** (1)(a) and (2) amended, (HB 12-1317), ch. 248, p. 1227, § 62, effective June 4.

Editor's note: This section is similar to former § 33-31-114 as it existed prior to 1984.

ANNOTATION

Applied in *People v. Boyd*, 642 P.2d 1 (Colo. 1982).

33-13-112. Enforcement - applicability. (1) Every parks and recreation officer and other peace officer of this state has the authority to enforce the provisions of this article and, in the exercise thereof, has the authority to stop and board any vessel; except that the officer shall have reasonable suspicion prior to boarding any vessel.

(2) The provisions of this article and the rules and regulations promulgated pursuant thereto shall apply to all waters of this state; except that such provisions shall not apply to standing bodies of water on private property which are used for private, noncommercial purposes.

Source: **L. 84:** Entire article added, p. 904, § 2, effective January 1, 1985. **L. 96:** (1) amended, p. 727, § 2, effective January 1, 1997. **L. 97:** (1) amended, p. 1607, § 6, effective June 4.

Editor's note: This section is similar to former § 33-31-111 as it existed prior to 1984.

33-13-113. Municipal corporations or organizations - powers. Nothing in this article shall be construed to prevent municipal corporations or quasi-municipal corporations, including, but not limited to, metropolitan recreation districts, from policing lakes or bodies of water located within all or part of the territorial boundaries of any such entities. Any person designated by such entities to engage in policing work upon said bodies of water may be commissioned by the division to enforce the provisions of this article as an authorized representative of the division. In addition, said entities shall also be empowered to charge and collect reasonable permit fees to defer the expense of such policing operations without the obligation of remitting such fees to the division, but such fees shall be in addition to those otherwise provided for in this article. Such entities are empowered to adopt and enforce reasonable rules and regulations governing the use of vessels on the bodies of water patrolled under their supervision if such rules and regulations do not conflict with the provisions of this article.

Source: **L. 84:** Entire article added, p. 904, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-31-112 as it existed prior to 1984.

33-13-113.5. Report required - when. The division shall report immediately to the president of the senate and the speaker of the house of representatives if funds received from the federal government for recreational boating safety under the state boating safety programs, 46 U.S.C. sec. 13101 et seq., as amended, or any successor program, cease or are expected to cease for any reason.

Source: L. 2011: Entire section added, (SB 11-092), ch. 182, p. 694, § 5, effective May 19.

33-13-114. Copies of laws and regulations furnished. (Repealed)

Source: L. 84: Entire article added, p. 905, § 2, effective January 1, 1985. **L. 2003:** Entire section repealed, p. 1949, § 25, effective May 22.

Editor’s note: This section is similar to former § 33-31-113 as it existed prior to 1984.

33-13-115. Termination of functions. (Repealed)

Source: L. 88: Entire section added, p. 931, § 18, effective April 28. **L. 90:** Entire section amended, p. 333, § 16, effective April 3. **L. 96:** Entire section repealed, p. 727, § 3, effective January 1, 1997.

33-13-116. Repeal of sections. Sections 33-13-103, 33-13-104, 33-13-105, and 33-13-107 are repealed, effective September 1, 2016. Prior to the repeal, the function of registration and regulation of vessels shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 689, § 60, effective April 20. **L. 96:** Entire section amended, p. 727, § 4, effective January 1, 1997. **L. 2011:** Entire section amended, (SB 11-092), ch. 182, p. 693, § 3, effective May 19.

ARTICLE 14
Snowmobiles

Editor’s note: This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 7 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-14-101.	Definitions.	33-14-111.	Snowmobile operation on right-of-way of streets, roads, or highways.
33-14-102.	Snowmobile registration - fees - applications - requirements - penalties - exemptions.	33-14-112.	Crossing roads, highways, and railroad tracks.
33-14-103.	Proof of ownership for registration purposes.	33-14-113.	Operation of snowmobiles on private property.
33-14-104.	Issuance of registration.	33-14-114.	Required equipment - snowmobiles.
33-14-105.	Transfer or other termination of ownership.	33-14-115.	Notice of accident.
33-14-106.	Snowmobile recreation fund - creation - use of moneys.	33-14-116.	Other operating restrictions.
33-14-107.	Rules.	33-14-117.	Hunting, carrying weapons on snowmobiles - prohibitions.
33-14-108.	Training courses.	33-14-118.	Regulation by political subdivisions.
33-14-109.	Restrictions on young operators.	33-14-119.	Enforcement - federal cooperation.
33-14-110.	Snowmobile operation on roadway of streets and highways.	33-14-120.	Repeal of sections. (Repealed)

33-14-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Administrative costs” includes, but is not limited to, printing, postage, mailing, and personnel related to registration processing.

(2) "Dealer" means a person engaged in the business of selling snowmobiles at wholesale or retail in this state.

(3) "Direct services" includes, but is not limited to, the activities and expenses associated with law enforcement, safety certification, capital equipment, rescue and first aid equipment, snowmobile facilities, and division and contract services related to clearing parking lots and providing trail maintenance.

(4) "Manufacturer" means a person engaged in the business of manufacturing snowmobiles in this state.

(5) "Operate" means to ride in or on and control the operation of a snowmobile.

(6) "Operator" means every person who operates or is in actual physical control of a snowmobile.

(7) "Owner" means a person, other than a lienholder, having title to a snowmobile and entitled to the use or possession thereof.

(8) "Person" means any individual, association, partnership, or public or private corporation, any municipal corporation, county, city, city and county, or other political subdivision of the state, or any other public or private organization of any character.

(8.5) "Possession" means physical custody of a snowmobile by any owner of a snowmobile or by any owner of a motor vehicle or trailer on or in which a snowmobile is placed for the purpose of transport.

(9) "Renter" means a person primarily engaged in the business of renting snowmobiles.

(10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

(11) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats. "Snowmobile" does not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

(11.5) "Staging area" means any parking lot, trailhead, or other location to or from which any snowmobile is transported by truck, trailer, or other motor vehicle where it is placed into operation or removed from operation. "Staging area" does not include any location to which a snowmobile is transported primarily for the purpose of service, maintenance, repair, storage, or sale.

(12) "Street", "road", "freeway", or "highway" means the entire right-of-way between boundary lines of any of such public ways when any part thereof is open to the use of the public as a matter of right for the purpose of motor vehicle travel.

Source: L. 84: Entire article added, p. 905, § 2, effective January 1, 1985. L. 88: (8.5) and (11.5) added, p. 1167, § 1, effective March 24.

Editor's note: This section is similar to former § 33-7-101 as it existed prior to 1984.

33-14-102. Snowmobile registration - fees - applications - requirements - penalties - exemptions. (1) (a) Except as provided in subsection (6) of this section, no person shall operate, nor have in his possession at any staging area, any snowmobile within the state unless such snowmobile has been registered and numbered in accordance with the provisions of this article. The division is authorized to assign identification numbers and register snowmobiles.

(b) The division shall employ snowmobile agents, including dealers and licensing agents serving as such for the division, for snowmobile registration pursuant to section 33-12-104. The agents shall take the registration application and issue a temporary registration and shall forward the application to the division, which shall issue the registration. Snowmobile dealers employed as licensing agents for snowmobile registration are authorized to issue annual registrations and shall retain a commission of up to one dollar, as authorized by the division, for each registration issued.

(2) (a) Every dealer shall require a purchaser of a new or used snowmobile sold at retail from the dealer's inventory to complete a registration application and pay the registration fee before the snowmobile leaves the dealer's premises, except for those snowmobiles purchased for use exclusively outside of this state. Any dealer who does not

comply with this paragraph (a) is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(b) (Deleted by amendment, L. 95, p. 339, § 5, effective July 1, 1995.)

(c) Each snowmobile owned by a dealer for rental purposes shall be registered pursuant to this section upon payment of an owner's fee as provided in paragraph (a) of subsection (3) of this section.

(3) (a) For all or any part of a year beginning October 1 and ending September 30, the original and each renewal registration fee by an owner shall be as specified pursuant to section 33-10-111 (5).

(b) The fee for replacement of a lost, mutilated, or destroyed registration or validation decal shall be as specified in section 33-12-101.

(4) (a) For each year beginning October 1 and ending September 30 or portion thereof for which such registration is made, the registration fee for all snowmobiles owned by a dealer or manufacturer which are operated for demonstration or testing purposes only shall be as specified pursuant to section 33-10-111 (5).

(b) Dealer and manufacturer registrations are not transferable and shall be distinguished by appropriate means by the division from the registration required for owners other than dealers and manufacturers.

(5) A registration certificate shall be issued without the payment of a fee for snowmobiles owned by the state of Colorado or a political subdivision thereof upon application therefor.

(6) No registration under this section is required for the following snowmobiles:

(a) Snowmobiles owned by any agency of the United States, another state, or a political subdivision of either, when such ownership is clearly displayed on the machine;

(b) Snowmobiles owned by a resident of another state or country if such snowmobiles are covered by a valid license of such other state or country and such snowmobiles have not been within this state for more than thirty consecutive days;

(c) Snowmobiles used strictly on private property for private, noncommercial purposes;

(d) Snowmobiles used only in sanctioned snowmobile races, including any racing snowmobile brought into the state which is exempt from registration in the state where the owner of said snowmobile resides.

(7) (Deleted by amendment, L. 95, p. 339, § 5, effective July 1, 1995.)

(8) All registrations shall expire at the end of the year for which issued. Application for renewal of registration for the succeeding year shall be made at such time and in such manner as the division shall prescribe.

(9) Any person who operates a snowmobile in violation of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: L. 84: Entire article added, p. 906, § 2, effective January 1, 1985. L. 88: (1)(a) amended and (6)(d) added, pp. 1167, 1168, §§ 2, 3, effective March 24. L. 95: (1)(b), (2)(a), (2)(b), (7), and (9) amended, p. 339, § 5, effective July 1. L. 96: (3)(a) and (4)(a) amended, p. 782, § 7, effective May 23. L. 2003: (2)(a) and (9) amended, p. 1949, § 26, effective May 22. L. 2011: (1)(b) amended, (SB 11-208), ch. 293, p. 1391, § 19, effective July 1.

Editor's note: This section is similar to former § 33-7-102 as it existed prior to 1984.

33-14-103. Proof of ownership for registration purposes. (1) The division shall require proof of ownership for snowmobiles purchased on or after July 1, 1976, prior to the registration of a snowmobile under this article, but such proof shall not be dependent upon any certificate of title, and no such certificate shall be issued by the division.

(2) The division shall keep a record of the manufacturer's number of all snowmobiles registered pursuant to this article and shall provide the department of revenue with a copy of said record monthly. The department of revenue shall maintain a computerized list of such record in order to aid in the recovery of stolen snowmobiles.

Source: L. 84: Entire article added, p. 907, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-7-102.5 as it existed prior to 1984.

33-14-104. Issuance of registration. (1) (a) Upon receipt of a sufficient application for registration of a snowmobile, as required by section 33-14-102, the division shall enter upon its records the registration of such vehicle under the distinctive number assigned to it pursuant to this section.

(b) A number assigned to a snowmobile at the time of its original registration shall remain with the snowmobile until the machine is destroyed, abandoned, or permanently removed from the state or until such registration number is changed or terminated by the division.

(2) The division shall, upon assignment of such number, issue and deliver to the owner a registration in such form as the division shall prescribe. A registration shall not be valid unless it is signed by the person who signed the application for registration. In the event of the loss, mutilation, or destruction of any registration, the owner of the registered snowmobile may file such statement and proof of such facts as the division shall require for the issuance of a replacement registration.

(3) (a) At the time of the original registration and at the time of each annual renewal thereof, the division shall issue to said registrant a validation decal indicating the distinctive number assigned to such vehicle as provided in subsection (1) of this section and the validity of the current registration and the expiration date thereof, which validation decal shall be affixed to the snowmobile in such manner as the division may prescribe.

(b) Notwithstanding the fact that a snowmobile has been assigned an identifying number, it shall not be considered as validly registered within the meaning of this section unless a validation decal and current registration have been issued.

(4) In the event that a snowmobile sought to be registered or reregistered does not comply with the provisions respecting equipment established by the regulations of the division, the division may deny the issuance of a validation decal and current registration.

(5) The registration number assigned to a snowmobile shall be displayed on the vehicle at all times in such manner as the division may, by regulation, prescribe. No number other than the number assigned to a snowmobile or the identification number of the registration in another state shall be painted, attached, or otherwise displayed on either side of the cowlings; except that racing numbers on a snowmobile being operated in a prearranged organized special event may be temporarily displayed for the duration of the race.

(6) Every person, while operating a snowmobile in this state which is required to be registered under this article, shall have in his possession or carry in the snowmobile the registration therefor and shall, upon demand of any peace officer authorized to enforce this article, produce for inspection the registration for such snowmobile and furnish to such officer any information necessary for the identification of such snowmobile and its owner.

(7) It is the duty of every owner holding a registration to notify the division, in writing, of any change of residence of such person within fifteen days after such change occurs and to inscribe on the registration, in the place provided, a record of such change of residence.

(8) (a) Any person who violates subsection (5) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of twenty-five dollars.

(b) Any person who violates subsection (6) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: L. 84: Entire article added, p. 907, § 2, effective January 1, 1985. **L. 95:** (8) amended, p. 973, § 23, effective July 1. **L. 2003:** (8) amended, p. 1949, § 27, effective May 22.

Editor's note: This section is similar to former § 33-7-103 as it existed prior to 1984.

33-14-105. Transfer or other termination of ownership. (1) When the use of a snowmobile for which a registration has already been issued is permanently discontinued,

the old registration shall be properly signed and returned to the division within fifteen days after discontinuance.

(2) (a) If there is a change of ownership of a snowmobile for which a registration has been issued, the new owner shall apply for a new registration from a dealer employed as a licensing agent or from the division. Such application shall set forth the original number issued and shall be accompanied by the old registration properly signed by the previous owner and by the required fee for registration as specified pursuant to section 33-10-111 (5).

(b) In the event that such snowmobile was purchased through a bona fide dealer, said application must be accompanied by a dealer's form, as prescribed by the division, numbered, completed, and signed by the dealer or his agent and by the new owner.

(3) It is the duty of every owner of a snowmobile registered pursuant to the provisions of this article to notify the division, in writing, of the destruction, theft, or permanent removal of such snowmobile from the state within fifteen days thereafter, and, in the event of destruction or theft, he shall surrender the registration with such notice.

Source: **L. 84:** Entire article added, p. 908, § 2, effective January 1, 1985. **L. 89:** (2)(a) amended, p. 1351, § 5, effective May 26. **L. 96:** (2)(a) amended, p. 783, § 8, effective May 23.

Editor's note: This section is similar to former § 33-7-104 as it existed prior to 1984.

33-14-106. Snowmobile recreation fund - creation - use of moneys. Except as provided in section 33-15-103 (1) when enforcement is by a wildlife officer, all fees from the registration of snowmobiles and one-half of all moneys collected for fines under this article, and all interest earned on such moneys, shall be credited to the snowmobile recreation fund, hereby created, and shall be used for the administration of this article and for the establishment and maintenance of snowmobile trails, vehicle parking areas, and facilities. However, any moneys collected in excess of five dollars per original or renewal registration shall be used exclusively for direct services and not administrative costs. The remaining one-half of all fines collected shall be credited to the state general fund.

Source: **L. 84:** Entire article added, p. 909, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-7-105 as it existed prior to 1984.

33-14-107. Rules. (1) The commission shall adopt rules, in the manner provided by article 4 of title 24, C.R.S., for the following purposes:

- (a) Registration of snowmobiles and display of registration numbers;
- (b) Formulation, in cooperation with appropriate federal agencies, of regulations for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of snowmobiles;
- (c) Formulation of other regulations concerning the use of snowmobiles, but not in any way inconsistent with the provisions of this article.

Source: **L. 84:** Entire article added, p. 909, § 2, effective January 1, 1985. **L. 2012:** IP(1) amended, (HB 12-1317), ch. 248, p. 1227, § 63, effective June 4.

Editor's note: This section is similar to former § 33-7-106 as it existed prior to 1984.

33-14-108. Training courses. (1) The division shall establish snowmobile information, safety, education, and training programs, including, but not limited to, the training of snowmobile operators, and shall issue snowmobile safety certificates and insignia to snowmobile operators who successfully complete the snowmobile safety education and training course.

(2) The division shall cooperate with private organizations and associations, private and public corporations, and local governmental units in furtherance of the programs established under this section.

Source: L. 84: Entire article added, p. 909, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-7-107 as it existed prior to 1984.

33-14-109. Restrictions on young operators. (1) No person under the age of ten years may operate a snowmobile, except upon lands owned or leased by his parent or guardian, unless he is accompanied by or under the immediate supervision of a person sixteen years of age or over or by a person over fourteen years of age who holds a snowmobile safety certificate issued by the division for the successful completion of a snowmobile safety education and training course conducted by the division.

(2) Except when accompanied or supervised in the manner provided in subsection (1) of this section, no person ten years of age or over who has not reached his sixteenth birthday shall operate a snowmobile in this state, except upon lands of his parent or guardian, unless he has received a snowmobile safety certificate for the successful completion of a snowmobile safety education and training course conducted by the division.

(3) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: L. 84: Entire article added, p. 909, § 2, effective January 1, 1985. L. 95: (3) amended, p. 973, § 24, effective July 1. L. 2003: (3) amended, p. 1950, § 28, effective May 22.

Editor's note: This section is similar to former § 33-7-108 as it existed prior to 1984.

33-14-110. Snowmobile operation on roadway of streets and highways. (1) A snowmobile may be operated on the roadway of a street or highway in this state only as provided in this section.

(2) No snowmobile may be operated on the roadway of an interstate highway or freeway except during emergency conditions declared by the proper state authority.

(3) A snowmobile may be operated on other streets and highways under the following restrictions:

(a) To cross a street or highway in the manner provided in section 33-14-112;

(b) To traverse a bridge or culvert on such street or highway;

(c) During special snowmobile events lawfully conducted pursuant to the authority granted to local subdivisions in this article;

(d) During emergency conditions declared by proper state authority;

(e) On the roadway of streets and highways which are not maintained for winter motor vehicle traffic;

(f) When local subdivisions have authorized by ordinance or resolution the establishment of snowmobile routes to permit the operation of snowmobiles on city streets or county roads. No street or road which is part of the state highway system may be so designated.

(g) When crossing railroad tracks.

Source: L. 84: Entire article added, p. 910, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-7-109 as it existed prior to 1984.

33-14-111. Snowmobile operation on right-of-way of streets, roads, or highways.

(1) Except as provided in section 33-14-110 (2), no snowmobile shall be operated on the right-of-way of any interstate highway or freeway.

(2) (a) A snowmobile may be operated on the right-of-way of other roads, streets, and highways as far as practicable from the roadway thereof.

(b) When operating on the right-of-way of a road, street, or highway as authorized by this section during hours of darkness, a snowmobile shall be operated only in conformity with the flow of traffic on the nearest lane of the adjacent roadway.

(3) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 910, § 2, effective January 1, 1985. **L. 95:** (3) amended, p. 973, § 25, effective July 1. **L. 2003:** (3) amended, p. 1950, § 29, effective May 22.

Editor's note: This section is similar to former § 33-7-110 as it existed prior to 1984.

33-14-112. Crossing roads, highways, and railroad tracks. (1) The crossing of a road or highway by a snowmobile operator, when not prohibited by this article, shall be made only in accordance with the following provisions:

(a) The crossing shall be made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.

(b) The snowmobile shall be brought to a complete stop before crossing the shoulder or, if none, the roadway, before proceeding.

(c) The operator shall yield the right-of-way to all motor vehicle traffic on such road or highway which constitutes an immediate hazard to such crossing.

(d) The crossing of a divided highway, when permitted under this article, shall be made only at an intersection of such highway with another road or highway.

(2) No snowmobile may be driven upon the right-of-way of any operating railroad, except for the crossing of the tracks at their intersection with a road or highway.

(3) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 911, § 2, effective January 1, 1985. **L. 95:** (3) amended, p. 973, § 26, effective July 1. **L. 2003:** (3) amended, p. 1950, § 30, effective May 22.

Editor's note: This section is similar to former § 33-7-111 as it existed prior to 1984.

33-14-113. Operation of snowmobiles on private property. No snowmobile shall be operated on private property other than that owned or leased by the operator or except when prior permission has been obtained from the owner, lessee, or agent of the owner or lessee. Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

Source: **L. 84:** Entire article added, p. 911, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 973, § 27, effective July 1. **L. 2003:** Entire section amended, p. 1950, § 31, effective May 22.

Editor's note: This section is similar to former § 33-7-112 as it existed prior to 1984.

33-14-114. Required equipment - snowmobiles. (1) No snowmobile shall be operated upon a public street or highway unless it is equipped with the following:

(a) While being operated between the hours of sunset and sunrise, at least one lighted head lamp and one lighted tail lamp, each of a minimum candlepower as prescribed by regulation of the division;

(b) Brakes and a muffler which conform to the standards prescribed by regulation of the division, which shall be applicable in all cases, except for snowmobiles being operated in organized races or similar competitive events held on private lands with the permission of the owner, lessee, or custodian of the land, on public lands and waters under the jurisdiction

of the division with its permission, or on other public lands with the consent of the public agency owning the land.

(2) No person shall sell or offer for sale in this state any snowmobile that is not equipped pursuant to the provisions of this section.

(3) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 911, § 2, effective January 1, 1985. **L. 95:** (3) amended, p. 974, § 28, effective July 1. **L. 2003:** (3) amended, p. 1950, § 32, effective May 22.

Editor's note: This section is similar to former § 33-7-115 as it existed prior to 1984.

33-14-115. Notice of accident. (1) The operator of a snowmobile involved in an accident resulting in property damage of fifteen hundred dollars or more or injuries resulting in hospitalization or death, or some person acting for the operator, or the owner of the snowmobile having knowledge of the accident shall immediately, by the quickest available means of communication, notify an officer of the Colorado state patrol, the sheriff's office of the county wherein the accident occurred, or the office of the police department of the municipality wherein the accident occurred.

(2) Any law enforcement agency receiving a report of accident under this section shall forward a copy thereof to the division which shall compile statistics annually based upon such reports.

(3) Within forty-eight hours after an accident involving a snowmobile, the accident shall be reported to the Denver office of the division. The report shall be made on forms furnished by the division and shall be made by the owner of the vehicle or someone acting for him.

(4) Any person who violates subsection (1) or (3) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of seventy-five dollars.

Source: **L. 84:** Entire article added, p. 912, § 2, effective January 1, 1985. **L. 95:** (1) and (4) amended, p. 340, § 6, effective July 1. **L. 2003:** (4) amended, p. 1950, § 33, effective May 22.

Editor's note: This section is similar to former § 33-7-114 as it existed prior to 1984.

33-14-116. Other operating restrictions. (1) No person shall operate a snowmobile in a careless or imprudent manner without due regard for width, grade, corners, curves, or traffic of trails, the requirements of section 33-14-110 (3), and all other attendant circumstances.

(2) No person shall operate a snowmobile in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property.

(3) No person shall operate a snowmobile while under the influence of alcohol, a controlled substance, as defined in section 18-18-102 (5), C.R.S., or any other drug, or any combination thereof, which renders the person incapable of the safe operation of a snowmobile.

(4) No owner shall permit such snowmobile, while under his control, to be operated in violation of the provisions of this article.

(5) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(6) Any person who violates subsection (2) or (3) of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(7) Any person who violates subsection (4) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 912, § 2, effective January 1, 1985. **L. 95:** (5) and (7) amended, p. 974, § 29, effective July 1. **L. 2003:** (5) to (7) amended, p. 1950, § 34, effective May 22. **L. 2012:** (3) amended, (HB 12-1311), ch. 281, p. 1631, § 84, effective July 1.

Editor's note: This section is similar to former § 33-7-115 as it existed prior to 1984.

33-14-117. Hunting, carrying weapons on snowmobiles - prohibitions. (1) It is unlawful for any person to:

- (a) Hunt any wildlife from a snowmobile;
 - (b) Operate or ride on any snowmobile with any firearm in his or her possession, unless such firearm is unloaded and enclosed in a carrying case or inserted in a scabbard, or with any bow unless it is unstrung or cased, but this paragraph (b) does not apply to any person to whom the division has issued a permit for the control of predators such as coyotes, foxes, bobcats, and the like;
 - (c) Pursue, drive, or otherwise intentionally disturb or harass any wildlife by use of a snowmobile, but this paragraph (c) shall not prevent any person from using a snowmobile to protect his crops and other property.
- (2) Permits to use snowmobiles for the control of predators such as coyotes, foxes, bobcats, and the like may be issued by the division or its district wildlife managers at no charge to persons applying therefor whose purpose is to protect livestock and other wildlife.
- (3) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine as follows:
- (a) For a violation of paragraph (a) of subsection (1) of this section, two hundred dollars;
 - (b) For a violation of paragraph (b) of subsection (1) of this section, fifty dollars; and
 - (c) For a violation of paragraph (c) of subsection (1) of this section, two hundred dollars.

Source: **L. 84:** Entire article added, p. 912, § 2, effective January 1, 1985. **L. 95:** (3) amended, p. 974, § 30, effective July 1. **L. 2003:** (3) amended, p. 1951, § 35, effective May 22. **L. 2011:** (1)(b) and (2) amended, (SB 11-208), ch. 293, p. 1391, § 20, effective July 1.

Editor's note: This section is similar to former § 33-7-116 as it existed prior to 1984.

33-14-118. Regulation by political subdivisions. (1) Any county, city and county, city, or town acting by its governing body may regulate the operation of snowmobiles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.

(2) No such political subdivision may adopt an ordinance which imposes a fee for the use of public land or water under the jurisdiction of any agency of the state or for the use of any access thereto owned by the state, county, city and county, city, or town; nor shall it require a snowmobile to be licensed or registered in such political subdivision.

Source: **L. 84:** Entire article added, p. 913, § 2, effective January 1, 1985.

Editor's note: This section is similar to former § 33-7-117 as it existed prior to 1984.

33-14-119. Enforcement - federal cooperation. (1) Every parks and recreation officer, every peace officer of this state and its political subdivisions, and every person commissioned by the division shall have the authority to enforce the provisions of this article.

(2) The division, with the advice and consent of the commission, is authorized to enter into cooperative agreements with federal land management agencies for the purpose of regulating snowmobile use on federal lands.

Source: **L. 84:** Entire article added, p. 913, § 2, effective January 1, 1985. **L. 2012:** (2) amended, (HB 12-1317), ch. 248, p. 1227, § 64, effective June 4.

Editor's note: This section is similar to former § 33-7-118 as it existed prior to 1984.

33-14-120. Repeal of sections. (Repealed)

Source: **L. 88:** Entire section added, p. 931, § 19, effective April 28. **L. 90:** Entire section amended, p. 333, § 17, effective April 3. **L. 91:** Entire section amended, p. 689, § 61, effective April 20. **L. 96:** Entire section repealed, p. 105, § 1, effective March 25.

ARTICLE 14.5

Off-highway Vehicles

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-14.5-101.	Definitions.	33-14.5-107.	Rules.
33-14.5-102.	Off-highway vehicle registration - nonresident-owned or -operated off-highway vehicle permits - fees - applications - requirements - exemptions.	33-14.5-108.	Off-highway vehicle operation prohibited on streets, roads, and highways.
33-14.5-103.	Proof of ownership for registration purposes.	33-14.5-109.	Required equipment - off-highway vehicles.
33-14.5-104.	Issuance of registration.	33-14.5-110.	Regulation by political subdivisions.
33-14.5-105.	Transfer or other termination of ownership.	33-14.5-111.	Enforcement - federal, state, and local cooperation.
33-14.5-106.	Off-highway vehicle recreation fund - creation - use of moneys.	33-14.5-112.	Off-highway use permit - fees - applications - requirements - exemptions.
		33-14.5-113.	Notice of accident.

33-14.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail in this state.

(2) "Direct services" includes, but is not limited to, the activities and expenses associated with law enforcement, capital equipment, rescue and first aid equipment, off-highway vehicle facilities, and division and contract services related to clearing parking lots and providing trail maintenance.

(3) "Off-highway vehicle" means any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:

- (a) Vehicles designed and used primarily for travel on, over, or in the water;
 - (b) Snowmobiles;
 - (c) Military vehicles;
 - (d) Golf carts;
 - (e) Vehicles designed and used to carry disabled persons;
 - (f) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or
 - (g) Vehicles registered pursuant to article 3 of title 42, C.R.S.
- (4) "Off-highway vehicle route" means any road, trail, or way owned or managed by

the state or any agency or political subdivision thereof or the United States for off-highway vehicle travel.

(5) "Owner" means any person, other than a lienholder, having a property interest in an off-highway vehicle and entitled to the use and possession thereof.

(6) "Possession" means physical custody of an off-highway vehicle by any person or by any owner of a motor vehicle or trailer on or in which an off-highway vehicle is placed for the purpose of transport.

(7) "Staging area" means any parking lot, trail head, or other location to or from which any off-highway vehicle is transported by truck, trailer, or other motor vehicle so that it may be placed into operation or removed from operation. "Staging area" does not include any location to which an off-highway vehicle is transported primarily for the purpose of service, maintenance, repair, storage, or sale.

Source: **L. 89:** Entire article added, p. 1361, § 1, effective April 1, 1990. **L. 95:** (4) amended, p. 340, § 7, effective July 1.

33-14.5-102. Off-highway vehicle registration - nonresident-owned or -operated off-highway vehicle permits - fees - applications - requirements - exemptions.

(1) (a) Except as provided in subsection (6) of this section, and except as provided for nonresident-owned and -operated off-highway vehicles in subsection (9) of this section, no person shall operate, nor have in his or her possession at any staging area, any off-highway vehicle within the state unless such off-highway vehicle has been registered and numbered in accordance with the provisions of this article. The division is authorized to assign identification numbers and register off-highway vehicles.

(b) The division shall employ off-highway vehicle agents, including dealers and licensing agents serving as such for the division, for off-highway vehicle registration pursuant to section 33-12-104. Upon receiving a registration application, an agent shall collect the fee specified pursuant to section 33-10-111 (5) and issue a temporary registration and shall forward the application to the division, which shall issue the registration. An agent may retain a commission of not in excess of one dollar, as authorized by the division, for each registration issued. Any dealer is authorized to issue a temporary registration when a person purchases an off-highway vehicle from such dealer.

(2) (a) Every dealer shall require a purchaser of an off-highway vehicle to complete a registration application and pay the registration fee before the vehicle leaves the dealer's premises, except for those off-highway vehicles purchased for use exclusively outside of this state.

(b) Each off-highway vehicle owned by a lessor for rental purposes shall be registered pursuant to this article upon the payment of a registration fee, as provided in paragraph (a) of subsection (3) of this section.

(3) (a) For each year, or portion thereof, beginning April 1 and ending the following March 31, the original and each renewal registration fee by an owner shall be the fee specified pursuant to section 33-10-111 (5).

(b) The fee for the replacement of a lost, mutilated, or destroyed registration certificate shall be the fee specified in section 33-12-101.

(4) (a) For each year, or portion thereof, beginning April 1 and ending the following March 31, for which such registration is made, the registration fee for all off-highway vehicles owned by a dealer or manufacturer and operated solely for demonstration or testing purposes shall be a fee specified pursuant to section 33-10-111 (5).

(b) Dealer and manufacturer registrations are not transferable and shall be distinguished from the registration required for owners.

(5) A registration certificate shall be issued without the payment of a fee for any off-highway vehicle owned by the state of Colorado or a political subdivision thereof upon application therefor.

(6) No registration under this article is required for any:

(a) Off-highway vehicle owned by any agency of the United States or another state or a political subdivision thereof when such ownership is clearly displayed on such vehicle;

(b) Off-highway vehicle owned by a resident of another state or country if such off-highway vehicle is covered by a valid license or registration of such other state or country and such off-highway vehicle has not been within this state for more than thirty consecutive days;

(c) Off-highway vehicle used strictly for agricultural purposes;

(d) Off-highway vehicle used strictly on private property;

(e) Off-highway vehicle operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(f) Off-highway vehicle used by a dealer or manufacturer, or an authorized designee thereof, for off-highway vehicle operator education or safety programs.

(7) Any person who operates an off-highway vehicle in violation of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(8) Any dealer who does not comply with paragraph (a) of subsection (2) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(9) (a) Notwithstanding the provisions of subsections (1) to (8) of this section, on and after April 1, 2000, no person shall operate, nor have in his or her possession at any staging area, any nonresident-owned or -operated off-highway vehicle within the state of Colorado unless such off-highway vehicle is covered by a valid license or registration of another state or country and such nonresident-owned or -operated off-highway vehicle has not been within this state for more than thirty consecutive days, or such nonresident-owned or -operated off-highway vehicle has been issued a permit pursuant to this subsection (9).

(b) The division is hereby authorized to issue permits to nonresident-owned or -operated off-highway vehicles.

(c) (I) Nonresident off-highway vehicle permits shall be sold by the agents designated pursuant to section 33-12-104, and the fee for said permits shall be the fee provided pursuant to section 33-10-111 (5).

(II) Nonresident off-highway vehicle permits shall be valid for one year or until the following March 31, whichever comes first.

(III) The fee for the replacement of a lost, mutilated, or destroyed nonresident off-highway vehicle permit shall be the fee specified in section 33-12-101 for replacement of passes and registrations.

(d) Nonresident off-highway vehicle permits shall be displayed as required by the division.

(e) The following nonresident off-highway vehicles shall be exempt from the requirements of this subsection (9):

(I) Vehicles owned by the United States or another state or political subdivision thereof if such ownership is clearly displayed on such vehicles;

(II) Vehicles operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(III) Vehicles used strictly on private property.

(f) Any person who violates the provisions of this subsection (9) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of thirty-five dollars.

Source: **L. 89:** Entire article added, p. 1362, § 1, effective April 1, 1990. **L. 95:** (6)(b) and (7) amended and (8) added, p. 341, § 8, effective July 1. **L. 96:** (1)(b), (3)(a), and (4)(a) amended, p. 783, § 9, effective May 23. **L. 99:** (1)(a) amended and (9) added, p. 887, § 1, effective August 4. **L. 2003:** (7) and (8) amended, p. 1951, § 36, effective May 22. **L. 2011:** (1)(b) amended, (SB 11-208), ch. 293, p. 1392, § 21, effective July 1.

33-14.5-103. Proof of ownership for registration purposes. (1) The division shall require proof of ownership for an off-highway vehicle prior to the initial registration

required under this article, but such proof shall not be dependent upon any certificate of title, and no certificate of title shall be issued by the division.

(2) The division shall keep a record of the manufacturer's numbers of all off-highway vehicles registered pursuant to this article and shall provide the department of revenue with a copy of said record monthly. The department of revenue shall maintain a computerized list of such record in order to aid in the recovery of stolen off-highway vehicles.

Source: L. 89: Entire article added, p. 1363, § 1, effective April 1, 1990.

33-14.5-104. Issuance of registration. (1) (a) Upon the receipt of a sufficient application for registration of an off-highway vehicle, as required by section 33-14.5-102, the division shall assign a distinctive number to the vehicle and shall enter upon its records the registration of such off-highway vehicle under the distinctive number assigned to it pursuant to this section.

(b) A number assigned to an off-highway vehicle at the time of its original registration shall remain with the off-highway vehicle until such off-highway vehicle is destroyed, abandoned, or permanently removed from the state or until such registration number is changed or terminated by the division.

(2) The division shall, upon assignment of such number, issue and deliver to the owner a registration in such form as the division shall prescribe. In the event of the loss, mutilation, or destruction of any registration, the owner of the registered off-highway vehicle shall file a statement containing such facts as the division shall require for the issuance of a replacement registration, together with the fee specified in section 33-12-101.

(3) At the time of the original registration and at the time of each annual renewal thereof, the division shall issue to said registrant a validation decal indicating the distinctive number assigned to such vehicle, as provided in subsection (1) of this section, and the validity of the current registration and the expiration date thereof, which validation decal shall be affixed to the off-highway vehicle in such manner as the division may prescribe. Notwithstanding the fact that an off-highway vehicle has been assigned an identifying number, it shall not be considered as validly registered within the meaning of this article unless a validation decal and current registration have been issued.

(4) In the event that an off-highway vehicle sought to be registered or reregistered does not comply with the provisions respecting equipment established by the regulations of the division, the division may deny the issuance of a current registration.

(5) The registration number assigned to an off-highway vehicle shall be displayed on the vehicle at all times in such manner as the division may, by regulation, prescribe.

(6) Every person, while operating an off-highway vehicle in this state which is required to be registered under this article, shall have on his person or in the off-highway vehicle the registration therefor and shall, upon demand of any peace officer authorized to enforce this article, produce for inspection the registration for such off-highway vehicle.

(7) (a) Any person who violates subsection (5) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of twenty-five dollars.

(b) Any person who violates subsection (6) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: L. 89: Entire article added, p. 1364, § 1, effective April 1, 1990. L. 95: (7) amended, p. 974, § 31, effective July 1. L. 2003: (7) amended, p. 1951, § 37, effective May 22.

33-14.5-105. Transfer or other termination of ownership. (1) If there is a change of ownership of an off-highway vehicle for which a registration has been issued, the new owner shall apply for a new registration from a dealer employed as a licensing agent or from the division. Such application shall set forth the original number issued and shall be accompanied by the old registration properly signed by the previous owner and by the required fee for registration, pursuant to section 33-10-111 (5).

(2) In the event that an off-highway vehicle was purchased through a dealer, such application must be accompanied by a dealer's form, as prescribed by the division, numbered, completed, and signed by the dealer or his agent and by the new owner.

Source: L. 89: Entire article added, p. 1364, § 1, effective April 1, 1990. **L. 96:** (1) amended, p. 783, § 10, effective May 23.

33-14.5-106. Off-highway vehicle recreation fund -- creation - use of moneys.

(1) All fees collected from the registration of off-highway vehicles and all fees collected from the sale of off-highway use permits, plus all interest earned on such moneys shall be credited to the off-highway vehicle recreation fund, which fund is hereby created, and shall be used for the administration of this article, for information and awareness on the availability of off-highway vehicle recreational opportunities, for the promotion of off-highway vehicle safety, for the establishment and maintenance of off-highway vehicle routes, parking areas, and facilities, and for the purchase or lease of private land for the purposes of access to public land for uses consistent with the provisions of this article; however, any moneys collected in excess of four dollars per original or renewal registration shall be used exclusively for direct services and not administrative costs. The general assembly shall make annual appropriations from the off-highway vehicle recreation fund for the purposes enumerated in this subsection (1).

(2) All moneys collected for fines imposed pursuant to the provisions of this article shall be distributed as follows:

(a) One-half of such amount collected shall be transferred to the state treasurer for credit to the general fund; and

(b) One-half of such amount collected shall be distributed as follows:

(I) If the citing officer is a park officer, the amount shall be transferred to the state treasurer and credited to the off-highway vehicle recreation fund; or

(II) If the citing officer is a wildlife officer or special wildlife officer, the amount shall be transferred to the state treasurer and credited to the wildlife cash fund; or

(III) If the citing officer is any other peace officer, such amount shall be transferred to the treasurer of the local jurisdiction in which the violation occurred to be credited to the appropriate fund.

(3) Notwithstanding any provision of this section to the contrary, on January 1, 2004, the state treasurer shall deduct seven hundred thousand dollars from the off-highway vehicle recreation fund and transfer such sum to the general fund.

Source: L. 89: Entire article added, p. 1365, § 1, effective April 1, 1990. **L. 2003:** (3) added, p. 1544, § 5, effective May 1; (2)(b)(II) amended, p. 1631, § 71, effective August 6. **L. 2011:** (2)(b)(I) and (2)(b)(II) amended, (SB 11-208), ch. 293, p. 1392, § 22, effective July 1.

33-14.5-107. Rules. (1) The commission shall adopt rules in the manner provided by article 4 of title 24, C.R.S., concerning the following:

(a) Registration of off-highway vehicles and display of registration numbers;

(b) Procedures and requirements to implement and administer the off-highway use permit program, including guidelines in connection with the exemptions therefrom;

(c) Formulation, in cooperation with appropriate federal agencies, of guidelines for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of off-highway vehicles;

(d) The use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way.

Source: L. 89: Entire article added, p. 1365, § 1, effective April 1, 1990. **L. 2012:** IP(1) amended, (HB 12-1317), ch. 248, p. 1227, § 65, effective June 4.

33-14.5-108. Off-highway vehicle operation prohibited on streets, roads, and highways. (1) No off-highway vehicle may be operated on the public streets, roads, or highways of this state except in the following cases:

(a) When a street, road, or highway is designated open by the state or any agency or political subdivision thereof;

(b) When crossing streets or when crossing roads, highways, or railroad tracks in the manner provided in section 33-14-112;

(c) When traversing a bridge or culvert;

(d) During special off-highway vehicle events lawfully conducted pursuant to the authority granted to local political subdivisions in this article;

(e) During emergency conditions declared by the proper state or local authority;

(f) When local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads, but no street or road which is part of the state highway system may be so designated;

(g) When using an off-highway vehicle for agricultural purposes;

(h) (I) When the United States or any agency thereof authorizes by any means such operation on lands under its jurisdiction.

(II) No action is required to be taken by the United States pursuant to this paragraph (h) to authorize the use of off-highway vehicles on lands under the jurisdiction of the United States.

(III) If conduct violates both this paragraph (h) and section 33-6-124 (4), enforcement shall occur only pursuant to section 33-6-124 (4).

(i) When a public utility, as defined in section 40-1-103 (1), C.R.S., or a cooperative electric association, as defined in section 40-9.5-102, C.R.S., or any agent thereof designated specifically for the purpose of meter reading or repair, is using an off-highway vehicle for business purposes.

(2) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 89:** Entire article added, p. 1366, § 1, effective April 1, 1990. **L. 95:** (1)(a) and (2) amended and (1)(h) added, p. 341, § 9, effective July 1. **L. 99:** (1)(i) added, p. 888, § 2, effective August 4. **L. 2003:** (2) amended, p. 1951, § 38, effective May 22. **L. 2008:** (1)(h)(III) added, p. 146, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 2008 act enacting subsection (1)(h)(III), see section 1 of chapter 54, Session Laws of Colorado 2008.

33-14.5-109. Required equipment - off-highway vehicles. (1) No off-highway vehicle shall be operated upon public land unless it is equipped with the following:

(a) At least one lighted head lamp and one lighted tail lamp, each having the minimum candlepower prescribed by regulation of the division while being operated between the hours of sunset and sunrise;

(b) Brakes and a muffler and spark arrester which conform to the standards prescribed by regulation of the division, which shall be applicable in all cases except for off-highway vehicles being operated in organized competitive events held on private lands with the permission of the landowner, lessee, or custodian of the land, on public lands and waters under the jurisdiction of the division with its permission, or on other public lands with the consent of the public agency owning the land.

(2) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 89:** Entire article added, p. 1366, § 1, effective April 1, 1990. **L. 95:** (2) amended, p. 974, § 32, effective July 1. **L. 2003:** (2) amended, p. 1952, § 39, effective May 22.

33-14.5-110. Regulation by political subdivisions. (1) Any county, city and county, city, or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.

(2) No county, city and county, city or town acting by its governing body may adopt an ordinance which imposes a fee for the use of public land or water under the jurisdiction of any agency of the state or for the use of any access thereto owned by the county, city and county, city, or town; nor shall it require an off-highway vehicle to be licensed or registered in such political subdivision.

Source: L. 89: Entire article added, p. 1366, § 1, effective April 1, 1990.

33-14.5-111. Enforcement - federal, state, and local cooperation. (1) Every parks and recreation officer, every peace officer of this state and its political subdivisions, and every person commissioned by the division has the authority to enforce the provisions of this article.

(2) The division is authorized to enter into cooperative agreements with federal land management agencies for the purpose of regulating off-highway vehicle use on federal lands.

Source: L. 89: Entire article added, p. 1367, § 1, effective April 1, 1990.

33-14.5-112. Off-highway use permit - fees - applications - requirements - exemptions. (1) (a) No later than January 1, 1990, the division of parks and recreation shall devise a plan for implementation of the off-highway use permit program.

(b) On and after January 1, 1991, the owner of every vehicle required to be registered pursuant to article 3 of title 42, C.R.S., and the owner or operator of every motor vehicle and off-highway vehicle from another state or country, when such vehicle is being used for recreational travel upon designated off-highway vehicle routes, shall obtain and display on such vehicle an off-highway use permit.

(2) Off-highway use permits shall be sold by the agents referred to in section 33-12-104, and the fee for said permits shall be the fee provided pursuant to section 33-10-111 (5).

(3) Off-highway use permits, when issued on April 1, shall be valid for a one-year period, which runs from April 1 through the following March 31. All permits issued during the year at any time after April 1 shall expire on the following March 31.

(4) Off-highway use permits shall be displayed as required by the division.

(5) The following vehicles shall be exempt from the requirements of this section:

(a) Vehicles owned by the United States or another state or political subdivision thereof if such ownership is clearly displayed on such vehicles;

(b) Vehicles operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(c) Vehicles operated on public land for purposes other than recreational use, which purposes shall include but not be limited to logging, mining, grazing of livestock, firewood-cutting, and the taking of trees for noncommercial purposes.

(6) Any person who violates paragraph (b) of subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: L. 89: Entire article added, p. 1367, § 1, effective April 1, 1990. **L. 95:** (6) amended, p. 974, § 33, effective July 1. **L. 96:** (2) amended, p. 784, § 11, effective May 23. **L. 2003:** (6) amended, p. 1952, § 40, effective May 22.

33-14.5-113. Notice of accident. (1) The operator of an off-highway vehicle involved in an accident resulting in property damage of fifteen hundred dollars or more or injuries resulting in hospitalization or death, or some person acting for the operator, or the owner of the off-highway vehicle having knowledge of the accident shall immediately, by the quickest available means of communication, notify an officer of the Colorado state patrol, the sheriff's office of the county wherein the accident occurred, or the office of the police department of the municipality wherein the accident occurred.

(2) Any law enforcement agency receiving a report of accident under this section shall forward a copy thereof to the division, which shall compile statistics annually based upon such reports.

(3) Within forty-eight hours after an accident involving an off-highway vehicle, the accident shall be reported to the Denver office of the division. The report shall be made on forms furnished by the division and shall be made by the owner or operator of the vehicle or someone acting for the owner or operator.

(4) Any person who violates subsection (1) or (3) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of seventy-five dollars.

Source: L. 95: Entire section added, p. 341, § 10, effective July 1. L. 2003: (4) amended, p. 1952, § 41, effective May 22.

ARTICLE 15

Law Enforcement and Penalties - Parks and Outdoor Recreation

Editor's note: This article was added in 1984 with an effective date of January 1, 1985. Prior to 1984, the substantive provisions of this article were contained in article 6 of this title.

Cross references: For the definitions applicable to this article, see § 33-10-102.

33-15-101.	Powers of officers.	33-15-109.	Damage to state property.
33-15-102.	Imposition of penalty - procedures.	33-15-110.	Vehicles and vessels - operation on state property.
33-15-103.	Disposition of fines - notice of court decisions.	33-15-111.	Motor vehicles - reckless operation. (Repealed)
33-15-104.	Items constituting public nuisance - when - seizure.	33-15-112.	Motor vehicles - careless operation.
33-15-105.	Eluding.	33-15-113.	Unattended vehicles without valid pass.
33-15-106.	Fires.	33-15-114.	Commercial use of state property.
33-15-107.	Camping.		
33-15-108.	Littering.		

33-15-101. Powers of officers. (1) Every peace officer, as defined in section 33-10-102 (17), has the authority to enforce this article and shall assist parks and recreation officers in the enforcement of articles 10 to 15 and 32 of this title and the rules of the commission adopted pursuant thereto. Each such officer has the full power and authority to arrest any person who such officer has probable cause to believe is guilty of a violation of articles 10 to 15 or 32 of this title or any rule adopted pursuant thereto, and, in accordance with the constitutions and laws of the United States and the state of Colorado, to open, enter, and search all places of concealment including motor vehicles and vessels and all other places as provided by law where such officer has probable cause to believe evidence relating to a violation of this title is to be found and to seize the same.

(2) When the public health, safety, welfare, or necessity requires, any officer having the power to enforce the provisions of articles 10 to 15 and 32 of this title shall have the authority to make use of any motor vehicle or other means of transportation, whether privately or publicly owned, to aid such officer in the performance of such officer's duties. In such a case, payment of reasonable compensation shall be made for the use of such motor

vehicle or other means of transportation. Any person who refuses to comply with the provisions of this subsection (2) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 913, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 967, § 6, effective July 1. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1227, § 66, effective June 4.

33-15-102. Imposition of penalty - procedures. (1) Any person who violates any of the provisions of articles 10 to 15 or 32 of this title or any rule of the commission that does not have a specific penalty listed is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(2) At the time that any person is charged with violating any petty offense or misdemeanor provisions of articles 10 to 15 or 32 of this title or any rule of the commission, the officer shall issue a summons and complaint to the alleged offender or, in the case of a violation for which a fine of a fixed amount is prescribed, may give the alleged offender an opportunity to voluntarily pay the fine and surcharge in the form of a penalty assessment. Penalty assessments shall not be issued for violations for which minimum and maximum fines have been established. The penalty assessment notice given to the alleged offender shall contain the information required in and be in the form of a summons and complaint and shall specify in dollars the amount of the penalty to be assessed for the alleged offense and the amount of the surcharge to be collected pursuant to section 24-33.5-415.6, C.R.S. If the alleged offender accepts such notice and pays the fine and surcharge entered thereon to the division within twenty days of issuance of the notice, such acceptance and payment shall constitute an acknowledgment of guilt by such person of the violation set forth in the penalty assessment notice. Any person who accepts a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard a written promise to pay the specified fine and surcharge may be taken by the officer to the nearest known post-office facility and be required to remit the amount of the specified fine and surcharge to the division immediately by mail in United States currency or other legal tender or by money order or personal check. Refusal or inability to remit the specified fine and surcharge by mail when required shall constitute a refusal to accept a penalty assessment notice. Checks tendered by the violator to and accepted by the division and on which payment is received by the division shall be deemed sufficient receipt. If the fine and surcharge are not so paid, then the officer who issued the penalty assessment notice shall docket the summons and complaint with a court of competent jurisdiction for appearance by the person to answer the charges therein contained at such time and place as is specified in the summons and complaint.

Source: **L. 84:** Entire article added, p. 914, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 967, § 7, effective July 1. **L. 2003:** (1) amended, p. 1952, § 42, effective May 22. **L. 2009:** (2) amended, (SB 09-241), ch. 295, p. 1581, § 10, effective July 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1228, § 67, effective June 4.

33-15-103. Disposition of fines - notice of court decisions. (1) (a) All moneys collected for fines under this article and articles 10 to 13 and 32 of this title, either by payment of a penalty assessment or assessed by a court upon conviction, shall be transmitted to the state treasurer, who shall credit such moneys to the parks and outdoor recreation cash fund; except that, when an arrest has been made or the citation for any offense, including those committed under article 14 of this title, has been issued by a wildlife officer of the division of parks and wildlife, all moneys collected for the fine shall be transmitted to the state treasurer, who shall credit one-half to the wildlife cash fund and one-half to the general fund.

(b) All moneys collected for fines imposed pursuant to the provisions of article 14.5 of this title shall be distributed as follows:

(I) One-half of such amount collected shall be transferred to the state treasurer for credit to the general fund; and

(II) One-half of such amount collected shall be distributed as follows:

(A) If the citing officer is a park officer, the amount shall be transferred to the state treasurer and credited to the off-highway vehicle recreation fund; or

(B) If the citing officer is a wildlife officer or special wildlife officer, the amount shall be transferred to the state treasurer and credited to the wildlife cash fund; or

(C) If the citing officer is any other peace officer, such amount shall be transferred to the treasurer of the local jurisdiction in which the violation occurred to be credited to the appropriate fund.

(2) The provisions of the "Colorado Crime Victim Compensation Act", article 4.1 of title 24, C.R.S., shall not apply to articles 10 to 15 or 32 of this title, and the costs imposed by said act shall not be levied on criminal actions for violations of articles 10 to 15 or 32 of this title.

(3) It is the duty of every clerk of a court before whom prosecutions and appeals of violators of articles 10 to 15 and 32 of this title are heard, within twenty days after any such trial, appeal, or dismissal thereof, to notify the division in writing of the result thereof and the amount of fine collected, if any, and the disposition of such fine.

(4) No fine, penalty, or judgment assessed or rendered under the provisions of articles 10 to 15 or 32 of this title shall be suspended, reduced, or remitted otherwise than as expressly provided by law.

Source: **L. 84:** Entire article added, p. 914, § 2, effective January 1, 1985. **L. 89:** (1) amended, p. 1368, § 3, effective April 1, 1990. **L. 95:** (1)(a), (2), (3), and (4) amended, p. 968, § 8, effective July 1. **L. 2003:** (1)(b)(II)(B) amended, p. 1631, § 72, effective August 6. **L. 2007:** (1)(a) amended, p. 952, § 1, effective May 17. **L. 2011:** (1)(a), (1)(b)(II)(A), and (1)(b)(II)(B) amended, (SB 11-208), ch. 293, p. 1392, § 23, effective July 1.

33-15-104. Items constituting public nuisance - when - seizure. (1) Every motor vehicle, vessel, firearm, or other personal property used or intended for use in recreational pursuits in violation of the provisions of articles 10 to 15 of this title is declared to be a public nuisance. Every such item shall be subject to seizure, confiscation, and forfeiture or destruction as provided in this section, unless the possession of said property is not unlawful and the owner of said property was not a party to the violation and would suffer undue hardship by the sale, confiscation, or destruction of the property.

(2) Any personal property subject to seizure, confiscation, and forfeiture or destruction under the provisions of this section, which is seized as a part of or incident to a criminal proceeding for violation of the provisions of articles 10 to 15 of this title and for which disposition is not provided by another statute of this state, shall be disposed of as provided in this section.

(3) Any personal property, the possession of which is illegal and which in the opinion of the court having jurisdiction over the criminal proceeding is not properly the subject of sale, may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the division. The court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(4) Except as otherwise provided in this section, the court may order any personal property sold by the division in the manner provided for sales on execution. The proceeds of the sale shall be applied as follows:

(a) To the fees and costs of removal and sale;

(b) To the payment of the state's costs on such action; and

(c) The balance, if any, or any portion thereof not otherwise distributed pursuant to this paragraph (c), to the parks and outdoor recreation cash fund. Instead of being deposited in the parks and outdoor recreation cash fund, the court may order that such balance or any portion thereof be transmitted as follows:

(I) To the seizing agency, if the court finds that the proceeds can be used by such agency;

(II) To any person who suffers bodily injury or property damage as a result of the action which constitutes the violation, if said person petitions the court therefor.

(5) In lieu of ordering the sale or destruction of personal property pursuant to this section, the court may, if it finds that it can be used by the agency which seized it, order it delivered to the agency for such use.

Source: L. 84: Entire article added, p. 915, § 2, effective January 1, 1985.

33-15-105. Eluding. It is unlawful for any person to elude or attempt to elude by any means a parks and recreation officer or other commissioned officer of the division after having received a visual or audible signal such as a red or red and blue light, a siren, or a voice command directing him to stop. Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of three hundred dollars.

Source: L. 84: Entire article added, p. 916, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 969, § 9, effective July 1.

33-15-106. Fires. (1) On any property under the control of the division, it is unlawful for any person to:

(a) Leave a fire unattended or fail to thoroughly extinguish a fire before leaving it;

(b) Start, build, tend, or maintain a fire in violation of the provisions of any applicable order lawfully issued by a governmental authority that prohibits, bans, or regulates fires during periods of extreme fire hazard and that is designed to promote the safety of persons and property.

(2) (a) Any person who violates paragraph (a) of subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of fifty dollars.

(b) Except as otherwise provided in paragraph (c) of this subsection (2), any person who violates paragraph (b) of subsection (1) of this section is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars and not greater than one thousand dollars. The fine imposed by this paragraph (b) shall be mandatory and not subject to suspension. Nothing in this paragraph (b) shall be construed to limit the court's discretion in exercising other available sentencing alternatives in addition to the mandatory fine.

(c) Any person who knowingly violates paragraph (b) of subsection (1) of this section and who knows or reasonably should know that he or she violates any order described in such paragraph that prohibits, bans, or regulates fires commits a class 6 felony.

(3) Any person who starts, builds, tends, or maintains a fire in a careless or reckless manner that indicates either a lack of due regard for the fire hazard present or a wanton and willful disregard for the safety of persons and property is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one thousand dollars.

(4) In addition to the penalties provided by this section, the court may require the defendant to reimburse the division for the costs of fire suppression in the case of wildfires.

Source: L. 84: Entire article added, p. 916, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 969, § 10, effective July 1. **L. 2002, 3rd Ex. Sess.:** (2) amended, p. 39, § 6, effective July 17.

33-15-107. Camping. It is unlawful for any person to camp on land or water under the control of the division unless the area is so designated and posted pursuant to rule of the commission. Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 916, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 975, § 34, effective July 1. **L. 2003:** Entire section amended, p. 1952, § 43, effective May 22. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1228, § 68, effective June 4.

33-15-108. Littering. (1) It is unlawful for any person to litter any land or water under the control of the division. Except as otherwise provided in subsection (2) of this section, any person who violates this section commits a class 2 petty offense and, upon conviction thereof, shall be punished as provided in section 18-4-511, C.R.S.

(2) Any person who throws, drops, or otherwise expels a lighted cigarette, cigar, match, or other burning material from a motor vehicle upon land under the control of the division commits a class 2 misdemeanor and shall be punished as provided in title 18, C.R.S.

Source: **L. 84:** Entire article added, p. 916, § 2, effective January 1, 1985. **L. 85:** Entire section amended, p. 671, § 3, effective July 1. **L. 2002, 3rd Ex. Sess.:** Entire section amended, p. 53, § 2, effective July 18.

33-15-109. Damage to state property. It is unlawful for any person to damage, alter, or destroy any real or personal property or property under the control of the division. Any person who violates this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition, the court may require the defendant to reimburse the division for damages.

Source: **L. 84:** Entire article added, p. 916, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 970, § 11, effective July 1. **L. 2002:** Entire section amended, p. 1545, § 298, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

33-15-110. Vehicles and vessels - operation on state property. (1) On any property under the control of the division, it is unlawful for any person:

(a) To operate or park a motor vehicle or vessel, except in designated areas where such operation or parking is authorized by the division;

(b) To operate a motor vehicle or vessel in excess of the posted speed limit;

(c) To park a motor vehicle or vessel in such a manner as to constitute or impede the normal flow of traffic or to leave a motor vehicle or vessel unattended for more than twenty-four hours. Any peace officer may order the removal or towing of any motor vehicle or vessel which is so parked, and such removal or towing shall be done at the expense of the owner and shall be in addition to any other penalty provided by law.

(d) To operate or park a motor vehicle without first purchasing the required valid passes or permits.

(2) Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

Source: **L. 84:** Entire article added, p. 916, § 2, effective January 1, 1985. **L. 95:** (2) amended, p. 975, § 35, effective July 1. **L. 2003:** (2) amended, p. 1952, § 44, effective May 22.

33-15-111. Motor vehicles - reckless operation. (Repealed)

Source: **L. 84:** Entire article added, p. 917, § 2, effective January 1, 1985. **L. 95:** Entire section repealed, p. 970, § 12, effective July 1.

33-15-112. Motor vehicles - careless operation. It is unlawful for any person to operate a motor vehicle on any property under the control of the division in a careless or

imprudent manner without due regard for the width, grade, corners, or curves of, the traffic on, or the traffic regulations governing public roads and without due regard for all other attendant circumstances. Any person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

Source: **L. 84:** Entire article added, p. 917, § 2, effective January 1, 1985. **L. 95:** Entire section amended, p. 975, § 36, effective July 1. **L. 2003:** Entire section amended, p. 1952, § 45, effective May 22.

33-15-113. Unattended vehicles without valid pass. (1) If an unattended vehicle is parked within an area where a valid parks pass is required and does not display a valid parks pass, a peace officer may place upon the vehicle a notice of summons and complaint pursuant to section 33-15-102 (2). Such notice shall contain the license plate number and state of registration of the vehicle but does not need to contain the identification of the alleged offender.

(2) The notice of summons and complaint shall direct the owner or operator of the vehicle to remit a penalty assessment pursuant to section 33-15-102 to the division within ten days after the issuance of such notice unless the person wishes to appear before a court of competent jurisdiction. If the penalty assessment is not paid within ten days after issuance, the peace officer shall mail a notice to the registered owner of the vehicle, setting forth the offense and the time and place where such offense occurred and directing the payment of the penalty assessment within twenty days after the issuance of the notice unless the person wishes to appear before a court of competent jurisdiction. If the penalty assessment is not paid within twenty days after the date of mailing of the second notice, the peace officer who issued the original penalty assessment notice shall file a complaint with a court of competent jurisdiction and issue and serve upon the registered owner of the vehicle a summons to appear in court at a time and place specified in the summons and to show cause why a penalty should not be imposed pursuant to section 33-15-110.

(3) Payment of a penalty assessment pursuant to subsection (2) of this section to the division shall be deemed to be received on the date it is postmarked.

(4) The registered owner of a motor vehicle is liable for payment of a penalty assessment regardless of whether the owner knew or should have known that the vehicle would be or was parked or left unattended in a manner that violated section 33-15-110.

Source: **L. 2003:** Entire section added, p. 1953, § 46, effective May 22. **L. 2004:** (3) amended, p. 1204, § 78, effective August 4.

33-15-114. Commercial use of state property. It is unlawful to operate any commercial business or to solicit business on any property owned or managed by the division without first obtaining written permission from the division or the commission pursuant to this title or any applicable rules promulgated by the commission. Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: **L. 2003:** Entire section added, p. 1953, § 46, effective May 22. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1229, § 69, effective June 4.

WILDLIFE - Continued

ARTICLE 20

Birds - Hunting Dogs

33-20-101 to 33-20-116. (Repealed)

Source: **L. 84:** Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) The substantive provisions of this article as it existed prior to 1984, relating to migratory birds, are now contained in § 33-1-115.

(2) This article was numbered as article 5 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 21

Fishing

33-21-101 to 33-21-112. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) Certain provisions contained in this article prior to 1984 are now contained in article 6 of this title.

(2) This article was numbered as article 6 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 22

Furbearers and Trapping

33-22-101 to 33-22-114. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) Certain provisions contained in this article prior to 1984 are now contained in article 6 of this title.

(2) This article was numbered as article 7 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 23

Outfitters, Guides, and Assistant Guides

33-23-101 to 33-23-108. (Repealed)

Source: L. 83: Entire article repealed, p. 1292, § 2, effective April 21.

Editor's note: This article was numbered as article 9 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the regulation of outfitters, see article 55.5 of title 12; for the regulation of river outfitters, see article 32 of this title.

OUTDOOR RECREATION

ARTICLE 30

Division of Parks and Outdoor Recreation

33-30-101 to 33-30-110. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) The substantive provisions of this article as it appeared prior to 1984 are now contained in article 10 of this title.

(2) This article was numbered as article 17 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 31

Vessels

33-31-101 to 33-31-115. (Repealed)

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) The substantive provisions of this article as it appeared prior to 1984 are now contained in article 13 of this title.

(2) This article was numbered as article 8 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 32

River Outfitters

33-32-101.	Legislative declaration.	33-32-106.	Equipment required - employees required to meet minimum qualifications.
33-32-102.	Definitions.	33-32-107.	River outfitters - prohibited operations - penalties.
33-32-103.	Powers and duties of the commission - rules.	33-32-108.	Enforcement.
33-32-103.5.	Variances.	33-32-109.	Denial, suspension, or revocation of license - disciplinary actions.
33-32-104.	License required - fee.	33-32-110.	Advisory committee - repeal.
33-32-105.	Minimum qualifications and conditions for a river outfitter's license.	33-32-111.	Fees - river outfitters cash fund.
33-32-105.5.	Minimum qualifications of guides, trip leaders, and guide instructors.	33-32-112.	Repeal of article.

33-32-101. Legislative declaration. The general assembly declares that it is the policy of this state to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the rivers of this state and, to that end, in the exercise of the police powers of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to license and regulate those persons who provide river-running services in the nature of equipment or personal services to such residents and nonresidents for the purpose of floating on rivers in this state unless the provider of such river-running services is providing such river-running services exclusively for family or friends. It is not the intent of the general assembly to interfere in any way with private land owner rights along rivers or to prevent the owners of whitewater equipment from using said equipment to accommodate friends when no consideration is involved; nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of state rivers when the services of river outfitters are not utilized or to interfere with the right of the United States to manage public lands and waters under its control. The general assembly recognizes that river outfitters, as an established business on rivers flowing within and without this state, make a significant contribution to the economy of this state and that the number of residents and nonresidents who are participating in river-running is steadily increasing.

Source: **L. 84:** Entire article added, p. 928, § 1, effective May 9. **L. 88:** Entire section amended, p. 1169, § 1, effective October 1. **L. 94:** Entire section amended, p. 1226, § 1, effective, July 1.

33-32-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advertise" or "advertisement" means any message in any printed materials or electronic media used in the marketing and messaging of river outfitter operations.

(1.4) and (2) Repealed.

(3) "Guide" means any individual, including but not limited to subcontractors, employed for compensation by any river outfitter for the purpose of operating vessels.

(4) "Guide instructor" means any qualified guide whose job responsibilities include the training of guides.

(5) "Person" means any individual, sole proprietorship, partnership, corporation, non-profit corporation or organization as defined in section 13-21-115.5 (3), C.R.S., limited liability company, firm, association, or other legal entity either located within or outside of this state.

(5.5) (a) "Regulated trip" means any river trip for which river-running services are provided which has been the subject of an advertisement or for which a fee has been charged regardless of whether such fee is:

(I) Charged exclusively for the river trip or as part of a packaged trip, recreational excursion, or camp; or

(II) Calculated to monetarily profit the river outfitter or is calculated merely to offset some or all of the actual costs of the river trip.

(b) "Regulated trip" does not include a trip in which a person is providing river-running services exclusively for family or friends as part of a social gathering of such family or friends.

(6) "River outfitter" means any person advertising to provide or providing river-running services in the nature of facilities, guide services, or transportation for the purpose of river-running; except that "river outfitter" does not include any person whose only service is providing motor vehicles, vessels, and other equipment for rent, any person whose only service is providing instruction in canoeing or kayaking skills, or any person who is providing river-running services exclusively for family or friends.

(7) "Trip leader" means any guide whose job responsibilities include being placed in charge of a river trip.

(8) "Vessel" means every description of watercraft used or capable of being used as a means of transportation of persons and property on the water, other than single-chambered air-inflated devices or seaplanes.

Source: **L. 84:** Entire article added, p. 929, § 1, effective May 9. **L. 88:** (3) amended, (4) and (5) R&RE, and (6) to (8) added, pp. 1169, 1170, §§ 2, 3, effective October 1. **L. 94:** (1), (5), and (6) amended and (1.4) and (5.5) added, p. 1227, § 2, effective July 1. **L. 2010:** (1) amended, (HB 10-1221), ch. 353, p. 1641, § 4, effective August 11. **L. 2012:** (1.4) and (2) repealed, (HB 12-1317), ch. 248, p. 1229, § 70, effective June 4.

33-32-103. Powers and duties of the commission - rules. The commission shall promulgate rules to govern the licensing of river outfitters, to regulate river outfitters, guides, trip leaders, and guide instructors, to ensure the safety of associated river-running activities, to establish guidelines to enable a river outfitter, guide, or trip leader to make a determination that the condition of the river constitutes a hazard to the life and safety of certain persons, and to carry out the purposes of this article. The commission may promulgate rules specifically outlining the procedures to be followed by the commission and by the enforcement section of the division in the event of a death or serious injury during a regulated trip. The commission shall e-mail a notice of every proposed rule to each licensee. The commission shall adopt rules regarding notification to outfitters of certain division personnel changes within ten days of the change and safety training standards and customer and outfitter interaction training standards for division rangers who monitor regulated trips.

Source: **L. 84:** Entire article added, p. 929, § 1, effective May 9. **L. 88:** Entire section amended, p. 1170, § 4, effective October 1. **L. 94:** Entire section amended, p. 1228, § 3, effective July 1. **L. 2010:** Entire section amended, (HB 10-1221), ch. 353, p. 1641, § 5, effective August 11. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1229, § 71, effective June 4.

33-32-103.5. Variances. The director may grant variances from rules adopted by the commission pursuant to section 33-32-103 to any river outfitter on a case-by-case basis if the director determines that the health, safety, and welfare of the general public will not be endangered by the issuance of such variance.

Source: **L. 94:** Entire section added, p. 1228, § 4, effective July 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1229, § 72, effective June 4.

33-32-104. License required - fee. (1) No person shall act in the capacity of a paid river outfitter or advertise or represent himself or herself as a river outfitter in this state without first obtaining a river outfitter's license in accordance with rules prescribed by the commission.

(2) An applicant for a river outfitter's license shall meet the minimum qualifications pursuant to section 33-32-105 and shall apply on a form prescribed by the commission. All applicants shall pay a nonrefundable license fee in an amount determined by the commission, which fee shall be adequate to cover the expenses incurred for inspections, licensing, and enforcement required by this article, and shall renew such license pursuant to a schedule adopted by the commission upon payment of the fee. License terms shall not exceed three years. The commission may offer licenses that differ in the length of their terms and may stagger the length of license terms so that approximately equal numbers of licensees renew their licenses each year.

(3) Every river outfitter's license shall, at all times, be conspicuously placed on the premises set forth in the license.

Source: **L. 84:** Entire article added, p. 929, § 1, effective May 9. **L. 88:** (3) added, p. 1170, § 5, effective October 1. **L. 2010:** (1) and (2) amended, (HB 10-1221), ch. 353, p. 1641, § 6, effective August 11. **L. 2012:** (1) and (2) amended, (HB 12-1317), ch. 248, p. 1230, § 73, effective June 4.

33-32-105. Minimum qualifications and conditions for a river outfitter's license.

(1) A river outfitter's license may be granted to any river outfitter, either within or without this state, meeting the following minimum qualifications and conditions:

(a) The river outfitter, if a corporation, shall be incorporated pursuant to the laws of this state or duly qualified to do business in this state.

(b) The river outfitter shall submit to the commission evidence of liability insurance in the minimum amount of three hundred thousand dollars' combined single limit for property damage and bodily injury.

(c) The river outfitter shall meet the safety standards for river-running established by the commission by regulation.

Source: **L. 84:** Entire article added, p. 929, § 1, effective May 9. **L. 88:** Entire section R&RE, p. 1170, § 6, effective October 1. **L. 2012:** (1)(b) and (1)(c) amended, (HB 12-1317), ch. 248, p. 1230, § 74, effective June 4.

33-32-105.5. Minimum qualifications of guides, trip leaders, and guide instructors.

(1) Individuals providing the services of guides, trip leaders, or guide instructors shall have the following minimum qualifications and such additional qualifications as the commission may establish by rule:

(a) Guides shall be eighteen years of age or older, possess a valid standard first-aid card, be trained in cardiopulmonary resuscitation, and have fifty hours of training on the river as a guide from a qualified guide instructor.

(b) Trip leaders shall be eighteen years of age or older, possess a valid standard first-aid card, be trained in cardiopulmonary resuscitation, and have logged at least five hundred river miles, of which at least two hundred fifty river miles shall have been logged while acting as a qualified guide and no more than two hundred fifty river miles shall have been logged while acting as a guide on nonregulated trips. Miles from nonregulated trips shall be documented and signed by the trip leader under penalty of perjury, and the licensee shall retain the documents during the term of the trip leader's employment.

(c) Guide instructors shall be eighteen years of age or older, possess a valid standard first-aid card, be trained in cardiopulmonary resuscitation, and have logged at least fifteen hundred river miles, of which at least seven hundred fifty river miles shall have been logged while acting as a qualified guide.

(2) (Deleted by amendment, L. 2010, (HB 10-1221), ch. 353, p. 1642, § 7, effective August 11, 2010.)

Source: **L. 88:** Entire section added, p. 1171, § 7, effective October 1. **L. 94:** Entire section amended, p. 1228, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1221), ch. 353, p. 1642, § 7, effective August 11. **L. 2012:** IP(1) amended, (HB 12-1317), ch. 248, p. 1230, § 75, effective June 4.

33-32-106. Equipment required - employees required to meet minimum qualifications. (1) All licensed river outfitters shall provide the river-outfitting equipment required by rules promulgated by the commission, and said equipment shall be in a serviceable condition for its operation as required by the rules promulgated by the commission.

(2) All river outfitters who employ or contract with guides, trip leaders, or guide instructors shall employ or contract only with such individuals who meet the qualifications provided in section 33-32-105.5 (1) and provided by those rules promulgated by the commission.

Source: **L. 84:** Entire article added, p. 930, § 1, effective May 9. **L. 88:** Entire section amended, p. 1171, § 8, effective October 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1230, § 76, effective June 4.

33-32-107. River outfitters - prohibited operations - penalties. (1) (a) No river outfitter shall operate a river-outfitting business without a valid license as prescribed by section 33-32-104 or without insurance as provided in section 33-32-105 (1) (b). Any river outfitter that violates this paragraph (a):

(I) Commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(II) Is liable for an administrative penalty of five times the annual licensing fee established pursuant to section 33-32-104 (2).

(b) If the river outfitter is a corporation, violation of this subsection (1) shall result in the officers of said corporation jointly and severally committing a class 2 misdemeanor, and said officers shall be punished as provided in section 18-1.3-501, C.R.S.

(2) It is unlawful for any river outfitter, guide, trip leader, or guide instructor to:

(a) Violate the safety equipment provisions of section 33-13-106. Any person who violates the provisions of this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars; except that any person who fails to have one personal flotation device for each person on board as required by section 33-13-106 (3) (a) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(b) Operate a vessel in a careless or imprudent manner without due regard for river conditions or other attending circumstances, or in such a manner as to endanger any person, property, or wildlife. Any person who violates the provisions of this paragraph (b) is guilty

of a class 3 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(c) Operate a vessel with wanton or willful disregard for the safety of persons or property. Any person who violates the provisions of this paragraph (c) is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) (Deleted by amendment, L. 94, p. 1229, § 6, effective July 1, 1994.)

(4) (a) No river outfitter or guide shall operate or maintain physical control of or allow any other person to operate or maintain physical control of a vessel on a regulated trip if such river outfitter, guide, or person is under the influence of alcohol or any controlled substance or any combination thereof, as specified in section 33-13-108.1.

(b) Any person who violates this subsection (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 84:** Entire article added, p. 930, § 1, effective May 9; (2)(a) amended, p. 1125, § 46, effective June 7. **L. 88:** (1), IP(2), and (3) amended, p. 1171, § 9, effective October 1. **L. 94:** (3) amended and (4) added, p. 1229, § 6, effective July 1. **L. 97:** (2)(a) amended, p. 1607, § 7, effective June 4. **L. 2002:** (1), (2), and (4)(b) amended, p. 1545, § 299, effective October 1. **L. 2010:** (1) amended, (HB 10-1221), ch. 353, p. 1642, § 8, effective August 11.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1), (2), and (4)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For comment, “The Public Trust Doctrine — A Tool for Expanding Recreational Rafting Rights in Colorado”, see 57 U. Colo. L. Rev. 625 (1986).

33-32-108. Enforcement. (1) (a) Every peace officer, as defined in this section, has the authority to enforce the provisions of this article and in the exercise of such authority is authorized to stop and board any vessel.

(b) As used in this section, “peace officer” means any division of parks and wildlife officer or any sheriff or city and county law enforcement officer certified by the peace officers standards and training board pursuant to part 3 of article 31 of title 24, C.R.S.

(2) (a) Any actual expenses incurred by a governmental entity for search and rescue efforts stemming from any river running activity conducted for consideration by a river outfitter pursuant to the provisions of this article shall be reimbursed by said river outfitter. Such expenses shall include but not be limited to hours worked, fuel, a reasonable fee for use of equipment, and equipment repair or replacement costs, if any.

(b) Pursuant to paragraph (a) of this subsection (2), any expenses incurred by governmental entities stemming from search and rescue efforts that are reimbursed by a river outfitter shall be distributed as follows:

(I) If to local law enforcement agencies, on a pro rata basis in proportion to the amount of assistance rendered thereby;

(II) If to the division of parks and wildlife, one-half of the moneys shall be credited to the parks and outdoor recreation cash fund, created in section 33-10-111, and one-half shall be credited to the wildlife cash fund, created in section 33-1-112.

(III) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1393, § 24, effective July 1, 2011.)

(3) (a) (I) If an authorized representative of the division conducts an inspection or investigation and determines that any provision of this article or any regulation promulgated pursuant to this article has been violated and that such violation creates or may create an emergency condition which may have a significant adverse effect on the health, safety, or welfare of any person, then such authorized representative shall immediately issue an order to the violating party to cease and desist the violating activity.

(II) Any order issued pursuant to this paragraph (a) shall set forth:

(A) The section of this article or the regulation promulgated pursuant to this article allegedly violated;

(B) The factual basis for the allegation of a violation; and

(C) A mandate that all violating activities cease immediately.

(III) (A) The recipient of any cease and desist order issued pursuant to this paragraph (a) may request a hearing to determine whether a violation of this article or of any regulation promulgated pursuant to this article has actually occurred if such request is made in writing within thirty days after the date of the service of the cease and desist order.

(B) Any hearing conducted pursuant to this subparagraph (III) shall be in accordance with article 4 of title 24, C.R.S.

(b) If a person fails to comply with a cease and desist order issued pursuant to paragraph (a) of this subsection (3), the director may request the attorney general or the district attorney for the judicial district in which the alleged violation occurred to bring an action for a temporary restraining order and for injunctive relief to enforce such cease and desist order.

(c) No stay of a cease and desist order may be issued until a hearing at which all parties are present has been held.

Source: **L. 84:** Entire article added, p. 930, § 1, effective May 9. **L. 94:** Entire section amended, p. 1229, § 7, effective July 1. **L. 2011:** (1)(b), IP(2)(b), (2)(b)(II), and (2)(b)(III) amended, (SB 11-208), ch. 293, p. 1393, § 24, effective July 1. **L. 2012:** (1)(b) amended, (HB 12-1283), ch. 240, p. 1136, § 54, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsection (1)(b), see section 1 of chapter 240, Session Laws of Colorado 2012.

33-32-109. Denial, suspension, or revocation of license - disciplinary actions.

(1) The commission may deny, suspend, or revoke a river outfitter license, place a licensed river outfitter on probation, or issue a letter of admonition to a licensed river outfitter if the applicant or holder:

(a) Violates section 33-32-105 or 33-32-106 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for licensure;

(b) Unlawfully acts as a river outfitter if such violation results in a conviction;

(c) Advertises as a river outfitter in this state without first obtaining a river outfitter license;

(d) Violates any provision of law regulating the practice of river outfitting in another jurisdiction if such violation resulted in disciplinary action against the applicant or holder. Evidence of such disciplinary action shall be prima facie evidence for the possible denial of a license or other disciplinary action in this state if the violation resulting in the disciplinary action in such other jurisdiction would be grounds for disciplinary action in this state.

(e) Violates section 18-4-503 or 18-4-504, C.R.S., resulting in two or more second or third degree criminal trespass convictions within any three- to five-year period while acting as a river outfitter or guide; except that the commission shall be governed by section 24-5-101, C.R.S., when considering any such conviction;

(f) Violates section 33-32-105.5 (1) by employing any person as a guide who fails to meet the requirements of such section; or

(g) Violates any order of the division or commission or any other provision of this article or any rules promulgated under this article.

(2) A plea of nolo contendere or a deferred prosecution shall be considered a violation for the purposes of this section.

(3) (a) Any proceeding to deny, suspend, or revoke a license granted under this article or to place a licensee on probation shall be pursuant to sections 24-4-104 and 24-4-105, C.R.S. Such proceeding may be conducted by an administrative law judge designated pursuant to part 10 of article 30 of title 24, C.R.S.

(b) Any proceeding conducted pursuant to this subsection (3) shall be deemed final for purposes of judicial review. Any appeal of any such proceeding shall be made to the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(4) The commission may deny an application for a river outfitter license or a renewal of a river outfitter's license if the applicant does not meet the requirements specified in section 33-32-105 or 33-32-106.

Source: **L. 84:** Entire article added, p. 931, § 1, effective May 9. **L. 88:** Entire section amended, p. 1172, § 10, effective October 1. **L. 94:** Entire section amended, p. 1230, § 8, effective July 1. **L. 2012:** IP(1), (1)(e), (1)(g), and (4) amended, (HB 12-1317), ch. 248, p. 1231, § 77, effective June 4.

33-32-110. Advisory committee - repeal. (1) The commission shall appoint a river outfitter advisory committee, consisting of two river outfitters and one representative of the division. The committee shall review and make recommendations concerning rules promulgated and proposed pursuant to this article.

(2) (a) This section is repealed, effective July 1, 2019.

(b) Prior to its repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: **L. 84:** Entire article added, p. 931, § 1, effective May 9. **L. 86:** Entire section amended, p. 423, § 54, effective March 26. **L. 88:** (2)(a) amended, p. 1172, § 11, effective October 1. **L. 89:** Entire section repealed, p. 1147, § 3, effective April 6. **L. 94:** Entire section RC&RE, p. 1232, § 9, effective July 1. **L. 2000:** Entire section repealed, p. 185, § 2, effective July 1. **L. 2010:** Entire section RC&RE, (HB 10-1221), ch. 353, p. 1643, § 9, effective August 11. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1231, § 78, effective June 4.

33-32-111. Fees - river outfitters cash fund. All fees collected under this article shall be transmitted to the state treasurer who shall credit the same to the river outfitters cash fund, which fund is hereby created. The general assembly shall make annual appropriations from such fund for the direct and indirect costs of administration of this article.

Source: **L. 84:** Entire article added, p. 931, § 1, effective May 9. **L. 94:** Entire section amended, p. 1232, § 10, effective July 1.

33-32-112. Repeal of article. This article and the licensing function of the division are repealed, effective September 1, 2019. Prior to such termination, the licensing function shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 84:** Entire article added, p. 931, § 1, effective May 9. **L. 88:** Entire section amended, p. 931, § 20, effective April 28; entire section amended p. 1172, § 12, effective October 1. **L. 94:** Entire section amended, p. 1232, § 11, effective July 1. **L. 2004:** Entire section amended, p. 297, § 3, effective August 4. **L. 2010:** Entire section amended, (HB 10-1221), ch. 353, p. 1640, § 3, effective August 11.

Editor's note: Amendments to this section by House Bill 88-1036 and House Bill 88-1138 were harmonized.

COLORADO NATURAL AREAS

ARTICLE 33

Colorado Natural Areas

Editor's note: Prior to enactment of this article, the substantive provisions of this article relating to the Colorado natural areas program were contained in article 10 of title 36.

Law reviews: For article, "Trusting the Public Interest to Judges: A Comment on the Public Trust Writings of Professors Sax, Wilkinson, Dunning and Johnson" see 63 Den. U. L. Rev. 565 (1986).

33-33-101.	Short title.	33-33-109.	Effect of article - rights of
33-33-102.	Legislative declaration.		property owners - water
33-33-103.	Definitions.		rights - prior designations.
33-33-104.	Colorado natural areas pro-	33-33-110.	Public entities urged to en-
	gram.		courage designation of natu-
33-33-105.	Powers and duties of the		ral areas.
	commission - rules.	33-33-111.	Periodic evaluation to be
33-33-106.	Colorado natural areas coun-		made by commission.
	cil.	33-33-112.	Supplemental protection.
33-33-107.	Responsibilities of the coun-	33-33-113.	Legislative review - termina-
	cil.		tion.
33-33-108.	Designation of a natural area.		

33-33-101. Short title. This article shall be known and may be cited as the "Colorado Natural Areas Act".

Source: L. 88: Entire article added, p. 1174, § 1, effective March 23.

33-33-102. Legislative declaration. The general assembly hereby finds and declares that certain lands and waters of this state representing diverse ecosystems, ecological communities, and other natural features or phenomena, which are our natural heritage, are increasingly threatened with irreversible change and are in need of special identification and protection and that it is in the public interest of present and future generations to preserve, protect, perpetuate, and enhance specific examples of these natural features and phenomena as an enduring resource. It is the intent of this article to provide a means by which these natural features and phenomena can be identified, evaluated, and protected through a statewide system of designated natural areas.

Source: L. 88: Entire article added, p. 1174, § 1, effective March 23.

ANNOTATION

Law reviews. For article, "Protecting Open Space and Wildlife Habitat Under Colorado Law", see 24 Colo. Law. 2729 (1995).

33-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Articles" or "articles of designation" means the documents filed by or at the direction of the owner of a natural area or a government agency having ownership or control thereof with the commission and accepted by the commission in the process of the designation of a natural area as provided in section 33-33-108.

(2) Repealed.

(3) "Council" means the Colorado natural areas council created as an advisory council to the commission by section 33-33-106.

(4) "Designated natural area" means a natural area which is formally designated under the provisions of this article.

(5) and (6) Repealed.

(7) "Inventory" means a compilation of data to identify areas described in subsection (8) of this section.

(8) "Natural area" means a physical and biological area which either retains or has reestablished its natural character, although it need not be completely undisturbed, and which typifies native vegetation and associated biological and geological features or provides habitat for rare or endangered animal or plant species or includes geologic or other natural features of scientific or educational value.

(9) “Program” means the statewide Colorado natural areas program established by this article.

(10) “Registry” means the list of natural areas identified by the council as areas eligible for designation.

(11) “System” means those natural areas designated under the provisions of this article for which articles of designation have been accepted.

Source: L. 88: Entire article added, p. 1174, § 1, effective March 23. **L. 2012:** (1) and (3) amended and (2), (5), and (6) repealed, (HB 12-1317), ch. 248, p. 1231, § 79, effective June 4.

33-33-104. Colorado natural areas program. (1) There is hereby established a statewide Colorado natural areas program to implement the intent and provisions of this article. The program shall be administered by the commission through the division with the advice of the council.

(2) The program shall identify and protect certain natural areas in this state which provide, among other benefits, the following benefits:

(a) Serve as examples of the native condition in studies relating to air, water, and soil quality and habitat productivity;

(b) Serve as resource material from which new knowledge may be derived and as a reservoir of genetic material which has present and future value to scientific inquiry;

(c) Provide habitat for rare or endangered animal or plant species;

(d) Serve as outdoor classrooms and laboratories for scientific study by students of all ages; or

(e) Serve as areas of natural beauty, inspiration, and diversity which meet aesthetic needs and which enrich the meaning and enjoyment of human life.

Source: L. 88: Entire article added, p. 1175, § 1, effective March 23. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1232, § 80, effective June 4.

33-33-105. Powers and duties of the commission - rules. (1) The commission, through the division and with the advice of the council, shall administer the program in accordance with this article and has the following additional powers and duties:

(a) To establish and continue an inventory and a registry;

(b) To establish criteria by which inventoried natural areas can be evaluated and selected for the registry and for designation as natural areas; except that no area shall be included in the registry without permission of the owner of the land;

(c) To promulgate rules for the registry and designation of natural areas and for the development of plans for the management and use of designated natural areas;

(d) To seek and approve, upon recommendation by the council, the designation of natural areas under the provisions of section 33-33-108 and, when necessary, to acquire by gift, devise, or grant the fee or other interest in real property or accept, under section 33-33-108, the designation of real property for inclusion in the system; except that the commission does not have the power of eminent domain for such purposes;

(e) To encourage and oversee scientific research and educational use of the designated natural areas; to conduct or encourage conduction of interpretive programs; and to establish and disseminate information and recommendations pertaining to the system and other natural areas;

(f) To administer and enforce this article and rules adopted pursuant thereto, including the provisions of the articles of a designated natural area; except that the commission has no regulatory jurisdiction under this article over lands or interests therein which are not part of the system;

(g) To cooperate and contract with any federal, state, or local governmental agency, educational institution, private organization, or individual for the purpose of carrying out the provisions of this article;

(h) To publish and submit to the governor every three years, or more often as it deems necessary, a report on the status and condition of each designated natural area and each natural area in the registry;

(i) To accept and disburse moneys and grants made available to the commission under any federal law for the purposes of this article; and

(j) To notify, ninety days prior to the final designation action, the board of county commissioners in the county in which any designation is being considered. At the request of the board of county commissioners, the commission shall hold a public hearing in said county for the purpose of evaluating any local concerns regarding the proposed designation.

(2) It is not a permitted function of the commission under this article to make or pursue direct or indirect objection or opposition before any governing body to any application for development of private lands.

Source: L. 88: Entire article added, p. 1176, § 1, effective March 23. **L. 2012:** IP(1), (1)(d), (1)(f), (1)(i), (1)(j), and (2) amended, (HB 12-1317), ch. 248, p. 1232, § 81, effective June 4.

33-33-106. Colorado natural areas council. (1) There is hereby created the Colorado natural areas council as an advisory council to the commission. The council shall advise the commission on the administration of the program and shall approve the registry and recommend the designation of natural areas by the commission.

(2) The council consists of the following seven members:

(a) One member each from the commission and the state board of land commissioners, appointed by their respective commission or board, who serve for three-year terms; and

(b) Five members appointed by the governor, who are individuals with a substantial interest in the preservation of natural areas and who serve for four-year terms.

(3) Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. All members of the council shall be residents of the state of Colorado, and no member appointed by the governor shall serve longer than two successive terms.

(4) The council shall, by majority vote of all members, elect its chairman from among the members appointed by the governor. A simple majority of the council membership shall constitute a quorum for the transaction of business.

(5) Members of the council shall receive no compensation for their service on the council but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(6) The council shall hold at least one regular meeting in each quarter of each calendar year and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairman and shall be called by him upon written request therefor signed by two or more members. A written notice of the time and place of each meeting shall be sent to each member.

(7) Any person who was a member of the Colorado natural areas council on January 1, 1988, shall continue to serve for the remainder of the term to which he was appointed.

Source: L. 88: Entire article added, p. 1177, § 1, effective March 23. **L. 2011:** (2) amended, (SB 11-208), ch. 293, p. 1393, § 25, effective July 1. **L. 2012:** (1) and (2) amended, (HB 12-1317), ch. 248, p. 1232, § 82, effective June 4.

Editor's note: The Colorado natural areas council is scheduled to be terminated, effective July 1, 2014, pursuant to § 33-33-113.

33-33-107. Responsibilities of the council. (1) The council has the following responsibilities:

(a) To establish procedures for the conduct of council business;

(b) To review the inventory and to approve the registry;

(c) To review and make recommendations on the commission's criteria for and selection of natural areas to be included in the registry and the system; except that no area shall be included in the registry without permission of the owner of the land;

(d) To advise the commission of the promulgation of rules for the registry and for the designation, management, protection, and use of designated natural areas;

(e) To seek and recommend the designation of natural areas by the board as part of the system, as provided in section 33-33-108;

(f) To review and make recommendations regarding scientific research, educational use, interpretive programs, and public information pertaining to designated natural areas;

(g) To review and make recommendations regarding the negotiation and enforcement of the articles of a designated natural area;

(h) To advise the commission on the disbursement of funds for the purposes of this article; and

(i) To review and make recommendations on commission reports made to the governor on the status of the program.

Source: L. 88: Entire article added, p. 1177, § 1, effective March 23. **L. 2012:** IP(1), (1)(c), (1)(d), (1)(h), and (1)(i) amended, (HB 12-1317), ch. 248, p. 1233, § 83, effective June 4.

33-33-108. Designation of a natural area. (1) A natural area that has been found by the commission, pursuant to its criteria, to be desirable for inclusion within the system and which inclusion has been approved by the owner of the land, becomes a designated natural area when articles of designation have been filed with the commission by the owner of the land or by a governmental agency having ownership or control of the land and such articles have been accepted by the commission with the advice and recommendation of the council.

(2) Articles of designation filed with the commission under subsection (1) of this section shall:

(a) Constitute a management agreement for the designated natural area;

(b) Contain a purpose clause defining the attributes which are the basis for the area's designation;

(c) Define the respective rights and duties of the owner and the commission;

(d) Contain provisions relating to management, development, use, public access, sale, or transfer of the area;

(e) Provide procedures to be applied in case of any violation of such articles;

(f) Contain such other provisions as may be necessary or advisable to carry out the purposes of this article, which shall include the recognition of reversionary rights if less than fee simple title has been acquired; and

(g) Contain the legal description of the designated property.

(3) The commission may, with the approval or upon the request of the owner of an interest therein and with the approval of the council, amend the articles of a designated natural area.

(4) A notice of the designation shall be certified by the commission to the county clerk and recorder in the county or counties in which the designated natural area is located for filing in the same manner as any document affecting real property.

Source: L. 88: Entire article added, p. 1178, § 1, effective March 23. **L. 2012:** (1), IP(2), (2)(c), (3), and (4) amended, (HB 12-1317), ch. 248, p. 1233, § 84, effective June 4.

33-33-109. Effect of article - rights of property owners - water rights - prior designations. (1) Nothing in this article shall be construed as:

(a) Diminishing the rights of owners of property as provided in the constitution of this state or in the constitution of the United States;

(b) Modifying or amending existing laws or court decrees with respect to the determination or administration of water rights;

(c) Affecting any previous designation of an area as a natural area.

Source: L. 88: Entire article added, p. 1178, § 1, effective March 23.

33-33-110. Public entities urged to encourage designation of natural areas. State agencies, counties, municipalities, institutions of higher education, and all other entities and institutions of the state and its political subdivisions are empowered and urged to recommend to the commission natural areas within their jurisdictions for inclusion in the system.

Source: **L. 88:** Entire article added, p. 1179, § 1, effective March 23. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1234, § 85, effective June 4.

33-33-111. Periodic evaluation to be made by commission. The commission shall make an evaluation of each designated natural area every three years, or more often as it deems necessary, to determine whether it is being administered in accordance with the conditions and provisions of the articles of designation. If such conditions and provisions are not being met, the commission may remove the area from the system.

Source: **L. 88:** Entire article added, p. 1179, § 1, effective March 23. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1234, § 86, effective June 4.

33-33-112. Supplemental protection. The provisions of this article shall supplement and not replace or otherwise affect any existing protective status that a designated natural area may have under any other law.

Source: **L. 88:** Entire article added, p. 1179, § 1, effective March 23.

33-33-113. Legislative review - termination. (1) The council shall be terminated on July 1, 2014, unless the general assembly votes to renew the legislative mandate of this article. Absent a vote to renew the legislative mandate of this article, the council shall cease all operations within a twelve-month period after July 1, 2014.

(2) Prior to said termination, such advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: **L. 88:** Entire article added, p. 1179, § 1, effective March 23. **L. 99:** (1) amended, p. 229, § 2, effective April 5. **L. 2004:** (1) amended, p. 334, § 2, effective July 1.

RECREATIONAL AREAS AND SKI SAFETY

ARTICLE 40

Parks and Fishing and Hunting Areas

33-40-101 to 33-40-122. (Repealed)

Source: **L. 83:** Entire article repealed, p. 1291, § 8, effective January 1, 1984.

Editor's note: This article was numbered as article 10 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 41

Owners of Recreational Areas - Liability

Editor's note: This article was numbered as article 4 of chapter 62, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Law reviews: For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988); for article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994).

33-41-101.	Legislative declaration.		or relieve obligation.
33-41-102.	Definitions.	33-41-105.5.	Prevailing party - attorney fees and costs.
33-41-103.	Limitation on landowner's liability.	33-41-106.	Ownership of recreational area by another state.
33-41-104.	When liability is not limited.		
33-41-105.	Article not to create liability		

33-41-101. Legislative declaration. The purpose of this article is to encourage owners of land to make land and water areas available for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

Source: L. 69: R&RE, p. 411, § 1. C.R.S. 1963: § 62-4-1. L. 97: Entire section amended, p. 53, § 1, effective March 21.

ANNOTATION

Landowner's right to close streams to public. Implicit in this section is the legislative recognition of the right of a landowner to close to public access the streams overlying his lands. *People v. Emmert*, 198 Colo. 137, 597 P.2d 1025 (1979).

The obvious purpose of a 1997 amendment to this section removing the phrase "within

rural areas" was to expand its scope to include urban areas. *Luenberger v. City of Golden*, 990 P.2d 1145 (Colo. App. 1999).

Applied in *Oteson v. United States*, 622 F.2d 516 (10th Cir. 1980).

33-41-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Charge" means a consideration paid for entry upon or use of the land or any facilities thereon or adjacent thereto; except that, in a case of land leased to a public entity or in which a public entity has been granted an easement or other rights to use land for recreational purposes, any consideration received by the owner for such lease, easement, or other right shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purposes of admitting any person constitute such a charge.

(2) "Land" also means roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment thereon, when attached to real property.

(3) "Owner" includes, but is not limited to, the possessor of a fee interest, a tenant, lessee, occupant, the possessor of any other interest in land, or any person having a right to grant permission to use the land, or any public entity as defined in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., which has an interest in land.

(4) "Person" includes any individual, regardless of age, maturity, or experience, or any corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

(4.5) "Public entity" means the same as defined in section 24-10-103 (5), C.R.S.

(5) "Recreational purpose" includes, but is not limited to, any sports or other recreational activity of whatever nature undertaken by a person while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant thereto, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: Hunting, fishing, camping, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, riding or driving motorized recreational vehicles, swimming, tubing, diving, spelunking, sight-seeing, exploring, hang gliding, rock climbing, kite flying, roller skating, bird watching, gold panning, target shooting, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity.

Source: L. 69: R&RE, p. 411, § 1. C.R.S. 1963: § 62-4-2. L. 73: p. 661, § 1. L. 83: (3) and (4) amended and (5) R&RE, p. 1302, §§ 1, 2, effective March 17. L. 88: (4.5) added, p. 1181, § 1, effective May 29. L. 97: (1) amended, p. 53, § 2, effective March 21.

ANNOTATION

Taxpayer status does not satisfy the "charge" requirement of the Colorado recreational use statute. *Kirkland v. United States*, 930 F. Supp. 1443 (D. Colo. 1996).

Applied in *People v. Emmert*, 198 Colo. 137, 597 P.2d 1025 (1979); *Otteson v. United States*, 622 F.2d 516 (10th Cir. 1980).

33-41-103. Limitation on landowner's liability. (1) Subject to the provision of section 33-41-105, an owner of land who either directly or indirectly invites or permits, without charge, any person to use such property for recreational purposes does not thereby:

- (a) Extend any assurance that the premises are safe for any purpose;
- (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;
- (c) Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person.

(2) (a) To the extent liability is found, notwithstanding subsection (1) of this section, the total amount of damages that may be recovered from a private landowner who leases land or a portion thereof to a public entity for recreational purposes or who grants an easement or other rights to use land or a portion thereof to a public entity for recreational purposes for injuries resulting from the use of the land by invited guests for recreational purposes shall be:

(I) For any injury to one person in any single occurrence, the amount specified in section 24-10-114 (1) (a), C.R.S.;

(II) For an injury to two or more persons in any single occurrence, the amount specified in section 24-10-114 (1) (b), C.R.S.

(b) The limitations in this subsection (2) shall apply only when access to the property is limited, to the extent practicable, to invited guests, when the person injured is an invited guest of the public entity, when such use of the land by the injured person is for recreational purposes, and only during the term of such lease, easement, or other grant.

(c) Nothing in this subsection (2) shall limit, enlarge, or otherwise affect the liability of a public entity.

(d) In order to ensure the independence of public entities in the management of their recreational programs and to protect private landowners of land used for public recreational purposes from liability therefor, except as otherwise agreed by the public entity and a private landowner, a private landowner shall not be liable for a public entity's management of the land or portion thereof which is used for recreational purposes.

(e) For purposes of this subsection (2) only, unless the context otherwise requires:

(I) "Invited guests" means all persons or guests of persons present on the land for recreational purposes, at the invitation or consent of the public entity, and with or without permit or license to enter the land, and all persons present on the land at the invitation or consent of the public entity or the landowner for business or other purposes relating to or arising from the use of the land for recreational purposes if the public entity receives all of the revenues, if any, which are collected for entry onto the land. "Invited guests" does not include any such persons or guests of any person present on the land for recreational purposes at the invitation or consent of the public entity or the landowner if the landowner retains all or a portion of the revenue collected for entry onto the land or if the landowner shares the revenue collected for entry onto the land with the public entity. For the purposes of this subparagraph (I), "revenue collected for entry" does not include lease payments, lease-purchase payments, or rental payments.

(II) "Land" means real property, or a body of water and the real property appurtenant thereto, or real property that was subject to mining operations under state or federal law and that has been abandoned or left in an inadequate reclamation status prior to August 3, 1977, for coal mining operations, or July 1, 1976, for hard rock mining operations, which is leased

to a public entity or for which an easement or other right is granted to a public entity for recreational purposes or for which the landowner has acquiesced to public use of existing trails that have historically been used by the public for recreational purposes. "Land", as used in this subsection (2), does not include real property, buildings, or portions thereof which are not the subject of a lease, easement, or other right of use granted to a public entity; except that land on which a landowner has acquiesced to public use of existing trails that have historically been used by the public for recreational purposes need not be subject to a lease, easement, or other right of use granted to a public entity. Nothing in this subparagraph (II) shall be construed to create a prescriptive easement on lands on which a landowner has acquiesced to public use of existing trails that have historically been used by the public for recreational purposes. The incidental use of such private property for recreational purposes shall not establish or presume facts to support land use classification or zoning.

(II.5) "Lease" or "leased" includes a lease-purchase agreement containing an option to purchase the property. Any lease in which a private landowner leases land or a portion thereof to a public entity for recreational purposes shall contain a disclosure advising the private landowner of the right to bargain for indemnification from liability for injury resulting from use of the land by invited guests for recreational purposes.

(II.7) "Management" means the entire range of activities, whether undertaken or not by the public entity, associated with controlling, directing, allowing, and administering the use, operation, protection, development, repair, and maintenance of private land for public recreational purposes.

(III) "Recreational purposes" includes, but is not limited to, any sports or other recreational activity of whatever nature undertaken by an invited guest while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant to, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: Fishing, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, swimming, tubing, diving, sight-seeing, exploring, kite flying, bird watching, gold panning, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity, as well as any activities related to such sports or recreational activities, and any activities directly or indirectly resulting from such sports or recreational activity.

(f) Nothing in this subsection (2) shall limit the protections provided, as applicable, to a landowner under section 13-21-115, C.R.S.

Source: L. 69: R&RE, p. 412, § 1. C.R.S. 1963: § 62-4-3. L. 88: (2) added, p. 1181, § 2, effective May 29. L. 89: (2)(e)(I) and (2)(e)(II) amended and (2)(e)(II.5) added, p. 1370, § 1, effective April 27. L. 97: IP(2)(a) amended and (2)(e)(II.7) added, p. 54, §§ 3, 4, effective March 21. L. 2006: (2)(e)(II) amended, p. 20, § 1, effective March 8.

ANNOTATION

Federal government protected on national forest service land. The federal government is entitled to the protection of this article as con-

cerns accidents occurring on national forest service land. *Otteson v. United States*, 622 F.2d 516 (10th Cir. 1980).

33-41-104. When liability is not limited. (1) Nothing in this article limits in any way any liability which would otherwise exist:

(a) For willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm;

(b) For injury suffered by any person in any case where the owner of land charges the person who enters or goes on the land for the recreational use thereof; except that, in case of land leased to a public entity or in which a public entity has been granted an easement or other rights to use land for recreational purposes any consideration received by the owner for such lease, easement, or other right shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purpose of admitting any person constitute such a charge;

(c) For maintaining an attractive nuisance; except that, if the property used for public recreational purposes contains mining operations that were abandoned or left in an inadequate reclamation status as provided in section 33-41-103 (2) (e) (II) or was constructed or is used for or in connection with the diversion, storage, conveyance, or use of water, the property and the water or abandoned mining operations within such property shall not constitute an attractive nuisance;

(d) For injury received on land incidental to the use of land on which a commercial or business enterprise of any description is being carried on; except that in the case of land leased to a public entity for recreational purposes or in which a public entity has been granted an easement or other rights to use land for recreational purposes, such land shall not be considered to be land upon which a business or commercial enterprise is being carried on.

Source: L. 69: R&RE, p. 412, § 1. C.R.S. 1963: § 62-4-4. L. 88: (1)(b) and (1)(d) amended, p. 1182, § 3, effective May 29. L. 97: (1)(c) amended, p. 54, § 5, effective March 21. L. 2006: (1)(c) amended, p. 21, § 2, effective March 8.

ANNOTATION

Taxpayer status does not satisfy the "charge" requirement of subsection (1)(b). Kirkland v. United States, 930 F. Supp. 1443 (D. Colo. 1996).

The phrase "incidental to the use of land" requires that a nexus exist between the commer-

cial or business enterprise and the use giving rise to the injury. Smith v. Cutty's Inc., 742 P.2d 347 (Colo. App. 1987); Kirkland v. United States, 930 F. Supp. 1443 (D. Colo. 1996).

Applied in Ottosen v. United States, 622 F.2d 516 (10th Cir. 1980).

33-41-105. Article not to create liability or relieve obligation. (1) Nothing in this article shall be construed to:

(a) Create, enlarge, or affect in any manner any liability for willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm, or for injury suffered by any person in any case where the owner of land charges for that person to enter or go on the land for the recreational use thereof;

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this article to exercise care in his use of such land and in his activities thereon or from the legal consequences of failure to employ such care;

(c) Limit any liability of any owner to any person for damages resulting from any occurrence which took place prior to January 1, 1970.

Source: L. 69: R&RE, p. 412, § 1. C.R.S. 1963: § 62-4-5.

33-41-105.5. Prevailing party - attorney fees and costs. The prevailing party in any civil action by a recreational user for damages against a landowner who allows the use of the landowner's property for public recreational purposes shall recover the costs of the action together with reasonable attorney fees as determined by the court.

Source: L. 97: Entire section added, p. 54, § 6, effective March 21.

33-41-106. Ownership of recreational area by another state. No other state of the United States, or agency or political subdivision thereof, shall acquire, own, or operate any land or interest therein in the state of Colorado for park or recreational purposes, except under the terms of an interstate compact.

Source: L. 75: Entire section added, p. 1335, § 1, effective May 22.

ARTICLE 42**Recreational Trails****33-42-101 to 33-42-112. (Repealed)**

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: (1) The substantive provisions of this article as it appeared prior to 1984 are now contained in article 11 of this title.

(2) This article was numbered as article 15 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 43**Registration of Recreational Vehicles****33-43-101 to 33-43-107. (Repealed)**

Source: L. 84: Entire article repealed, p. 925, § 19, effective January 1, 1985.

Editor's note: This article was numbered as article 16 of chapter 62, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 44**Ski Safety and Liability**

Law reviews: For article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990); for article, "Allocation of the Risks of Skiing: A Call for the Reapplication of Fundamental Common Law Principles", see 67 U. L. Rev. 165 (1990); for article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994); for article, "Colorado Ski Law", see 27 Colo. Law 5 (February 1998); for article, "Ski Law in Colorado: The Timorous No Longer Stay at Home", see 31 Colo. Law. 9 (February 2002).

33-44-101.	Short title.		duties.
33-44-102.	Legislative declaration.	33-44-109.	Duties of skiers - penalties.
33-44-103.	Definitions.	33-44-110.	Competition and freestyle terrain.
33-44-104.	Negligence - civil actions.	33-44-111.	Statute of limitation.
33-44-105.	Duties of passengers.	33-44-112.	Limitation on actions for injury resulting from inherent dangers and risks of skiing.
33-44-106.	Duties of operators - signs.		Limitation of liability.
33-44-107.	Duties of ski area operators - signs and notices required for skiers' information.	33-44-113.	Inconsistent law or statute.
33-44-108.	Ski area operators - additional	33-44-114.	

33-44-101. Short title. This article shall be known and may be cited as the "Ski Safety Act of 1979".

Source: L. 79: Entire article added, p. 1237, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Changes in Colorado Ski Law", see 13 Colo. Law. 407 (1984). For article, "The Development of the Standard

of Care in Colorado Ski Cases", see 15 Colo. Law. 373 (1986).

33-44-102. Legislative declaration. The general assembly hereby finds and declares that it is in the interest of the state of Colorado to establish reasonable safety standards for the operation of ski areas and for the skiers using them. Realizing the dangers that inhere in the sport of skiing, regardless of any and all reasonable safety measures which can be employed, the purpose of this article is to supplement the passenger tramway safety provisions of part 7 of article 5 of title 25, C.R.S.; to further define the legal responsibilities of ski area operators and their agents and employees; to define the responsibilities of skiers using such ski areas; and to define the rights and liabilities existing between the skier and the ski area operator and between skiers.

Source: L. 79: Entire article added, p. 1237, § 1, effective July 1.

ANNOTATION

Purpose of Ski Safety Act is to establish reasonable safety standards and to define relative rights and responsibilities of ski area operators and skiers. *Graven v. Vail Assocs., Inc.*, 909 P.2d 514 (Colo. 1995).

But, neither this act nor the statutory provisions concerning passenger tramway safety (part 7 of article 5 of title 25, C.R.S.) pre-empts or supersedes the common law standard of care applicable to ski lift operators, to use the highest degree of care commensurate with the practical operation of the lift, regardless of the season. The general assembly did not intend for the regulations adopted by the tram-

way board to preclude common law negligence actions against ski lift operators or the duty to exercise the highest degree of care. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

By excluding ski lift accidents from the definition of "inherent dangers and risks of skiing", the general assembly clearly chose not to alter the common law standard of care applicable to ski lift safety: the highest degree of care commensurate with the practical operation of the lift, regardless of the season. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

33-44-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Base area lift" means any passenger tramway which skiers ordinarily use without first using some other passenger tramway.

(2) "Competitor" means a skier actually engaged in competition, a special event, or training or practicing for competition or a special event on any portion of the area made available by the ski area operator.

(3) "Conditions of ordinary visibility" means daylight and, where applicable, nighttime in nonprecipitating weather.

(3.1) "Extreme terrain" means any place within the ski area boundary that contains cliffs with a minimum twenty-foot rise over a fifteen-foot run, and slopes with a minimum fifty-degree average pitch over a one-hundred-foot run.

(3.3) "Freestyle terrain" includes, but is not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes, and all other constructed and natural features, half-pipes, quarter-pipes, and freestyle-bump terrain.

(3.5) "Inherent dangers and risks of skiing" means those dangers or conditions that are part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, such as ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, extreme terrain, and trees, or other natural objects, and collisions with such natural objects; impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, or other man-made structures and their components; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including but not limited to roads, freestyle terrain,

jumps, and catwalks or other terrain modifications; collisions with other skiers; and the failure of skiers to ski within their own abilities. The term “inherent dangers and risks of skiing” does not include the negligence of a ski area operator as set forth in section 33-44-104 (2). Nothing in this section shall be construed to limit the liability of the ski area operator for injury caused by the use or operation of ski lifts.

(4) “Passenger” means any person who is lawfully using any passenger tramway.

(5) “Passenger tramway” means a device as defined in section 25-5-702 (4), C.R.S.

(6) “Ski area” means all ski slopes or trails and all other places within the ski area boundary, marked in accordance with section 33-44-107 (6), under the control of a ski area operator and administered as a single enterprise within this state.

(7) “Ski area operator” means an “area operator” as defined in section 25-5-702 (1), C.R.S., and any person, partnership, corporation, or other commercial entity having operational responsibility for any ski areas, including an agency of this state or a political subdivision thereof.

(8) “Skier” means any person using a ski area for the purpose of skiing, which includes, without limitation, sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device; or for the purpose of using any of the facilities of the ski area, including but not limited to ski slopes and trails.

(9) “Ski slopes or trails” means all ski slopes or trails and adjoining skiable terrain, including all their edges and features, and those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (8) of this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this subsection (9) or in subsection (8) of this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subsection (8) of this section.

Source: **L. 79:** Entire article added, p. 1238, § 1, effective July 1. **L. 90:** (3.5) added and (8) amended, p. 1540, § 2, effective July 1. **L. 95:** (7) amended, p. 1107, § 51, effective May 31. **L. 2004:** (2), (3.5), (6), (8), and (9) amended and (3.1) and (3.3) added, p. 1382, § 1, effective May 28.

Editor’s note: Subsection (3.5) was originally numbered as (10) in Senate Bill 90-80 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1990 act enacting subsection (3.5) and amending subsection (8), see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

The term “competitor” does not include a person glide testing skis at the request of his employer, a ski manufacturer. He was not practicing for any competition but was only testing skis for use by racers who would be competing. *Rowan v. Vail Holdings, Inc.*, 31 F. Supp. 2d 889 (D. Colo. 1998).

A ski operator’s negligence, which is established by a statutory violation of the Ski Safety Act that causes injury to a skier, is not an inherent danger or risk of skiing. *Doering ex rel. Barrett v. Copper Mountain, Inc.*, 259 F.3d 1202 (10th Cir. 2001).

Variations in steepness or terrain under subsection (3.5) strongly suggests that definition of “inherent dangers and risks of skiing” cover those occurring within skiable areas and do not necessarily include those that might be encountered adjacent to the runs. *Graven v. Vail Assocs., Inc.*, 909 P.2d 514 (Colo. 1995).

The term “ski area” does not include an area devoted to the parking of motor vehicles and the operation of shuttle buses. Therefore, none of the provisions of this act are applicable. *McLean v. Winter Park Recreation Ass’n*, 762 P.2d 751 (Colo. App. 1988).

The term “ski area” includes a bobsled run operated by defendant and the term “skier” includes those riding the bobsled. *Cuny v. Vail Associates, Inc.*, 902 P.2d 881 (Colo. App. 1995).

The district court properly denied motion requesting it to find as a matter of law that a collision with snow-grooming equipment is not an inherent danger or risk of skiing. *Doering ex rel. Barrett v. Copper Mountain, Inc.*, 259 F.3d 1202 (10th Cir. 2001).

33-44-104. Negligence - civil actions. (1) A violation of any requirement of this article shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of the person violating such requirement.

(2) A violation by a ski area operator of any requirement of this article or any rule or regulation promulgated by the passenger tramway safety board pursuant to section 25-5-704 (1) (a), C.R.S., shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of such operator.

(3) All rules adopted or amended by the passenger tramway safety board on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II), C.R.S.

Source: **L. 79:** Entire article added, p. 1238, § 1, effective July 1. **L. 80:** (3) amended, p. 789, § 28, effective June 5. **L. 81:** (3) amended, p. 1179, § 10, effective July 1. **L. 94:** (2) amended, p. 1644, § 74, effective May 31.

ANNOTATION

This article applies to ski accident cases and not § 13-21-115. *Calvert v. Aspen Skiing Co.*, 700 F. Supp. 520 (D. Colo. 1988).

This article would apply to ski accident cases which involve dangerous conditions that are ordinarily present at ski areas and § 13-21-115 would protect skiers against those dangerous conditions that are not commonly present at ski areas. *Giebins v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

A ski operator's negligence, which is established by a statutory violation of the Ski Safety Act that causes injury to a skier, is not

an inherent danger or risk of skiing. *Doering ex rel. Barrett v. Copper Mountain, Inc.*, 259 F.3d 1202 (10th Cir. 2001).

Although the general assembly specifies in this section that any violation of statute or rule is negligence per se, in the absence of clear legislative intent to the contrary, this statutory remedy does not bar preexisting common law rights of action. The provisions of this section act to supplement, rather than bar, common law actions in ski lift accident cases. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

33-44-105. Duties of passengers. (1) No passenger shall board a passenger tramway if he does not have sufficient physical dexterity, ability, and knowledge to negotiate or use such facility safely or until such passenger has asked for and received information sufficient to enable him to use the equipment safely. A passenger is required to follow any written or verbal instructions that are given to him regarding the use of the passenger tramway.

(2) No passenger shall:

(a) Embark upon or disembark from a passenger tramway except at a designated area except in the event of a stoppage of the passenger tramway (and then only under the supervision of the operator) or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(b) Throw or expel any object from any passenger tramway while riding on such device, except as permitted by the operator;

(c) Act, while riding on a passenger tramway, in any manner that may interfere with proper or safe operation of such passenger tramway;

(d) Engage in any type of conduct that may contribute to or cause injury to any person;

(e) Place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or any other surface lift any object that could cause another skier to fall;

(f) Embark upon a passenger tramway marked as closed;

(g) Disobey any instructions posted in accordance with this article or any verbal instructions by the ski area operator regarding the proper or safe use of a passenger tramway unless such verbal instructions are contrary to this article or the rules promulgated under it, or contrary to posted instructions.

Source: **L. 79:** Entire article added, p. 1239, § 1, effective July 1.

ANNOTATION

Law reviews. For note, "Exculpatory Clauses and Public Policy: A Judicial Dilemma", see 53 U. Colo. L. Rev. 793 (1982).

33-44-106. Duties of operators - signs. (1) Each ski area operator shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each passenger tramway readable in conditions of ordinary visibility and, where applicable, adequately lighted for nighttime passengers. Signs shall be posted as follows:

(a) At or near the loading point of each passenger tramway, regardless of the type, advising that any person not familiar with the operation of the device shall ask the operator of the device for assistance and instruction;

(b) At the interior of each two-car and multicar passenger tramway, showing:

(I) The maximum capacity in pounds of the car and the maximum number of passengers allowed;

(II) Instructions for procedures in emergencies;

(c) In a conspicuous place at each loading area of two-car and multicar passenger tramways, stating the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(d) At all chair lifts, stating the following:

(I) "Prepare to Unload", which shall be located not less than fifty feet ahead of the unloading area;

(II) "Keep Ski Tips Up", which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

(III) "Unload Here", which shall be located at the point designated for unloading;

(IV) "Safety Gate", which shall be located where applicable;

(V) "Remove Pole Straps from Wrists", which shall be located prominently at each loading area;

(VI) "Check for Loose Clothing and Equipment", which shall be located before the "Prepare to Unload" sign;

(e) At all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, stating the following:

(I) "Remove Pole Straps from Wrists", which shall be placed at or near the loading area;

(II) "Stay in Tracks", "Unload Here", and "Safety Gate", which shall be located where applicable;

(III) "Prepare to Unload", which shall be located not less than fifty feet ahead of each unloading area;

(f) Near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

(g) At or near the boarding area of all lifts, regarding the requirements of section 33-44-109 (6).

(2) Other signs not specified by subsection (1) of this section may be posted at the discretion of the ski area operator.

(3) The ski area operator, before opening the passenger tramway to the public each day, shall inspect such passenger tramway for the presence and visibility of the signs required by subsection (1) of this section.

(4) The extent of the responsibility of the ski area operator under this section shall be to post and maintain such signs as are required by subsection (1) of this section in such condition that they may be viewed during conditions of ordinary visibility. Evidence that signs required by subsection (1) of this section were present, visible, and readable where required at the beginning of the passenger tramway operation on any given day raises a presumption that all passengers using said devices have seen and understood said signs.

Source: L. 79: Entire article added, p. 1240, § 1, effective July 1.

ANNOTATION

Issue of duty to warn is an issue of fact to be determined by a jury if the issue is alleged to be one of the factors that led to plaintiff's injuries.

Graven v. Vail Assocs., Inc., 909 P.2d 514 (Colo. 1995).

33-44-107. Duties of ski area operators - signs and notices required for skiers' information. (1) Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 33-44-106. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

(2) A sign shall be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols which the skier may encounter at the ski area as follows:

(a) The ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(b) The ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(c) The ski area's trails and slopes which have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(d) The ski area's extreme terrain shall be signed at the commonly used access designated with two black diamonds containing the letters "E" in one and "X" in the other in white and the words "extreme terrain". The ski area's specified freestyle terrain areas shall be designated with an orange oval.

(e) Closed trails or slopes, designated by an octagonal-shaped sign with a red border around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

(3) If applicable, a sign shall be placed at or near the loading point of each passenger tramway, as follows:

"WARNING: This lift services (most difficult) or (most difficult and more difficult) or (more difficult) slopes only."

(4) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, such operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, such a trail or slope or portion thereof may be closed with ropes or fences.

(5) The ski area operator shall place a sign at or near the beginning of each trail or slope, which sign shall contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subsection (2) of this section. This requirement shall not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to his beginning to ski the same.

(6) The ski area operator shall mark its ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility. Where the owner of land adjoining a ski area closes all or part of his land and so advises the ski area operator, such portions of the boundary shall be signed as required by paragraph (e) of subsection (2) of this section. This requirement shall not apply in heavily wooded areas or other nonskiable terrain.

(7) The ski area operator shall mark hydrants, water pipes, and all other man-made structures on slopes and trails which are not readily visible to skiers under conditions of ordinary visibility from a distance of at least one hundred feet and shall adequately and appropriately cover such obstructions with a shock-absorbent material that will lessen injuries. Any type of marker shall be sufficient, including but not limited to wooden poles, flags, or signs, if the marker is visible from a distance of one hundred feet and if the marker itself does not constitute a serious hazard to skiers. Variations in steepness or terrain,

whether natural or as a result of slope design or snowmaking or grooming operations, including but not limited to roads and catwalks or other terrain modifications, are not man-made structures, as that term is used in this article.

(8) (a) Each ski area operator shall post and maintain signs which contain the warning notice specified in paragraph (c) of this subsection (8). Such signs shall be placed in a clearly visible location at the ski area where the lift tickets and ski school lessons are sold and in such a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift. Each sign shall be no smaller than three feet by three feet. Each sign shall be white with black and red letters as specified in this paragraph (a). The words "WARNING" shall appear on the sign in red letters. The warning notice specified in paragraph (c) of this subsection (8) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every ski lift ticket sold or made available for sale to skiers by any ski area operator shall contain in clearly readable print the warning notice specified in paragraph (c) of this subsection (8).

(c) The signs described in paragraph (a) of this subsection (8) and the lift tickets described in paragraph (b) of this subsection (8) shall contain the following warning notice:

WARNING

Under Colorado law, a skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any injury resulting from any of the inherent dangers and risks of skiing, including: Changing weather conditions; existing and changing snow conditions; bare spots; rocks; stumps; trees; collisions with natural objects, man-made objects, or other skiers; variations in terrain; and the failure of skiers to ski within their own abilities.

Source: L. 79: Entire article added, pp. 1242, 1245, §§ 1, 1, effective July 1. L. 90: (2)(d) and (7) amended and (8) added, p. 1541, § 3, effective July 1. L. 2004: (2)(d) amended, p. 1383, § 2, effective May 28.

Cross references: For the legislative declaration contained in the 1990 act amending subsections (2)(d) and (7) and enacting subsection (8), see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

Issue of whether ski area had a duty to warn its patrons is a question of law to be resolved by the court, which can be resolved on appeal through an interpretation of the Ski Safety Act. *Graven v. Vail Assocs., Inc.*, 888 P.2d 310 (Colo. App. 1994).

Duties imposed on ski area operators by this act concern a very limited number of specifically identified activities and conditions that relate only to the posting of certain specified signs and to providing lighting and other conspicuous markings for snow-grooming vehicles and snowmobiles. *Graven v. Vail Assocs., Inc.*, 888 P.2d 310 (Colo. App. 1994).

Nothing in this section suggests that a ski area operator has a duty to provide any additional warnings regarding the defined "inherent dangers and risks of skiing". *Graven v. Vail Assocs., Inc.*, 888 P.2d 310 (Colo. App. 1994).

Ski area not liable for failing to post a warning sign since an area presenting varia-

tions in steepness or terrain, such as a drop-off or ravine is an area presenting inherent dangers and risks of skiing and is not a "danger area" requiring a particular type of warning sign. *Graven v. Vail Assocs., Inc.* 888 P.2d 310 (Colo. App. 1994).

"Ski slopes or trails" includes all ski slopes or trails and adjoining skiable terrain; therefore, ski area operators do not simply have a duty to mark ski area boundaries in a fashion readily visible to skiers who are located in certain designated areas, but instead they are required to mark boundaries in a fashion readily visible to any person skiing on a slope, trail, or adjoining skiable terrain. *Anderson v. Vail Corp.*, 251 P.3d 1125 (Colo. App. 2010); *Ciocian v. Vail Corp.*, 251 P.3d 1130 (Colo. App. 2010).

The phrase "such obstructions" in subsection (7) clearly refers to the obstructions referred to earlier in the sentence, namely, "man-made structures which are not readily visible to

skiers under conditions of ordinary visibility from a distance of at least 100 feet". Rowan v. Vail Holdings, Inc., 31 F. Supp. 2d 889 (D. Colo. 1998).

Applied in Rimkus v. Northwest Colo. Ski Corp., 706 F.2d 1060 (10th Cir. 1983).

33-44-108. Ski area operators - additional duties. (1) Any motorized snow-grooming vehicle shall be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(2) Whenever maintenance equipment is being employed to maintain or groom any ski slope or trail while such ski slope or trail is open to the public, the ski area operator shall place or cause to be placed a conspicuous notice to that effect at or near the top of that ski slope or trail. This requirement shall not apply to maintenance equipment transiting to or from a grooming project.

(3) All snowmobiles operated on the ski slopes or trails of a ski area shall be equipped with at least the following: One lighted headlamp, one lighted red tail lamp, a brake system maintained in operable condition, and a fluorescent flag at least forty square inches mounted at least six feet above the bottom of the tracks.

(4) The ski area operator shall have no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries marked as required by section 33-44-107 (6).

(5) The ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This subsection (5) shall not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness.

Source: **L. 79:** Entire article added, p. 1242, § 1, effective July 1. **L. 90:** (5) amended, p. 1542, § 4, effective July 1. **L. 2004:** (2) amended, p. 1384, § 3, effective May 28.

Cross references: For the legislative declaration contained in the 1990 act amending subsection (5), see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

Warning sign must be posted when maintenance equipment is present on slopes for purposes of "grooming and maintaining" a slope, but is not actively "grooming" in that particular location. Phillips v. Monarch Recreation Corp., 668 P.2d 982 (Colo. App. 1983).

Issue of duty to warn is an issue of fact to be determined by a jury if the issue is alleged to be one of the factors that led to plaintiff's injuries. Graven v. Vail Assocs., Inc., 909 P.2d 514 (Colo. 1995).

33-44-109. Duties of skiers - penalties. (1) Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing; except that a skier is not precluded under this article from suing another skier for any injury to person or property resulting from such other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary, the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(2) Each skier has the duty to maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him.

(3) No skier shall ski on a ski slope or trail that has been posted as "Closed" pursuant to section 33-44-107 (2) (e) and (4).

(4) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails.

(5) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with this article near base area lifts, on the passenger tramways, and on such ski slopes or trails as he is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 33-44-106 and 33-44-107.

(6) Each ski or snowboard used by a skier while skiing shall be equipped with a strap or other device capable of stopping the ski or snowboard should the ski or snowboard become unattached from the skier. This requirement shall not apply to cross country skis.

(7) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator; nor shall a skier place any object in such an uphill track.

(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail.

(9) No person shall move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drug.

(10) No skier involved in a collision with another skier or person in which an injury results shall leave the vicinity of the collision before giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision; in which event the person so leaving the scene of the collision shall give his or her name and current address as required by this subsection (10) after securing such aid.

(11) No person shall knowingly enter upon public or private lands from an adjoining ski area when such land has been closed by its owner and so posted by the owner or by the ski area operator pursuant to section 33-44-107 (6).

(12) Any person who violates any of the provisions of subsection (3), (9), (10), or (11) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

Source: **L. 79:** Entire article added, p. 1243, § 1, effective July 1. **L. 82:** (9) amended, p. 255, § 17, effective May 3. **L. 90:** (1) and (2) amended, p. 1542, § 5, effective July 1. **L. 2004:** (6) and (10) amended, p. 1384, § 4, effective May 28. **L. 2006:** (12) amended, p. 130, § 1, effective July 1. **L. 2012:** (9) amended, (HB 12-1311), ch. 281, p. 1631, § 85, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act amending subsections (1) and (2), see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

The term “responsibility” encompasses the legal concept of “fault”. In effect, the statute creates a rebuttable presumption that the skier is at fault whenever he collides with other skiers and objects, and “fault” may be defined as the equivalent of negligence. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

Given the connection between “responsibility” and “negligence”, in the context of a skiing accident case, the term “responsibility” may be equated with the concept of “negligence” for purposes of applying the presumption contained

within this section. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

The phrase “natural object” is not unconstitutionally vague. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

Skiers as a group do not constitute a suspect class, and being free from a legislatively imposed rebuttable presumption of negligence is not a fundamental right. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

Evidentiary presumption places upon skier the burden of rebutting the presumption by pre-

sending evidence of the ski area operator's negligence which outweighs the presumption of the skier's sole negligence. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

Presumption is not unconstitutionally vague in describing rebuttal burden. *Pizza v. Wolf Creek Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

33-44-110. Competition and freestyle terrain. (1) The ski area operator shall, prior to use of any portion of the area made available by the ski area operator, allow each competitor an opportunity to reasonably visually inspect the course, venue, or area.

(2) The competitor shall be held to assume the risk of all course, venue, or area conditions, including, but not limited to, weather and snow conditions; obstacles; course or feature location, construction, or layout; freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used. No liability shall attach to a ski area operator for injury or death to any competitor caused by course, venue, or area conditions that a visual inspection should have revealed or by collisions with other competitors.

Source: L. 79: Entire article added, p. 1243, § 1, effective July 1. L. 2004: Entire section amended, p. 1384, § 5, effective May 28.

33-44-111. Statute of limitation. All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within two years after the claim for relief arises and not thereafter.

Source: L. 79: Entire article added, p. 1243, § 1, effective July 1. L. 90: Entire section amended, p. 1543, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

This section and not former § 13-80-110 is the applicable statute of limitations for actions to recover damages for an injury in a ski area. *Schafer v. Aspen Skiing Corp.*, 742 F.2d 580 (10th Cir. 1984).

Three-year statute of limitations in this section does not violate equal protection or constitutional provisions governing special legislation, grant of special privileges or immunities, or access to courts. *Schafer v. Aspen Skiing Corp.*, 742 F.2d 580 (10th Cir. 1984).

Neither § 2-4-107 nor § 2-4-108 applicable in determining the computation of the statute

of limitations in this section. *Schafer v. Aspen Skiing Corp.*, 742 F.2d 580 (10th Cir. 1984).

Statute not applicable to action resulting from injury occurring in a parking lot. Since the term "ski area" does not include an area devoted to the parking of motor vehicles and the operation of shuttle buses, none of the provisions of this act, including the statute of limitations in this section, are applicable. *McLean v. Winter Park Recreational Ass'n*, 762 P.2d 751 (Colo. App. 1988).

33-44-112. Limitation on actions for injury resulting from inherent dangers and risks of skiing. Notwithstanding any judicial decision or any other law or statute to the contrary, including but not limited to sections 13-21-111 and 13-21-111.7, C.R.S., no skier may make any claim against or recover from any ski area operator for injury resulting from any of the inherent dangers and risks of skiing.

Source: L. 90: Entire section added, p. 1543, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

A ski operator's negligence, which is established by a statutory violation of the Ski Safety Act that causes injury to a skier, is not an inherent danger or risk of skiing. *Doering ex rel. Barrett v. Copper Mountain, Inc.*, 259 F.3d 1202 (10th Cir. 2001).

Slush, trees, ravine, or precipice outside the ski trail and not as a matter of law within the "inherent dangers and risks of skiing" as

causation of plaintiff's injuries is an issue for the jury to determine. Plaintiff must prove defendant's conduct was a substantial contributing cause of the accident. *Graven v. Vail Assocs., Inc.*, 909 P.2d 514 (Colo. 1995).

The term "skiing" includes bobsledding. *Cuny v. Vail Assocs., Inc.*, 902 P.2d 881 (Colo. App. 1995).

33-44-113. Limitation of liability. The total amount of damages which may be recovered from a ski area operator by a skier who uses a ski area for the purpose of skiing or for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or any other device and who is injured, excluding those associated with an injury occurring to a passenger while riding on a passenger tramway, shall not exceed one million dollars, present value, including any derivative claim by any other claimant, which shall not exceed two hundred fifty thousand dollars, present value, and including any claim attributable to noneconomic loss or injury, as defined in sections 13-21-102.5 (2), C.R.S., whether past damages, future damages, or a combination of both, which shall not exceed two hundred fifty thousand dollars. If, upon good cause shown, the court determines that the present value of the amount of lost past earnings and the present value of lost future earnings, or the present value of past medical and other health care costs and the present value of the amount of future medical and other health care costs, or both, when added to the present value of other past damages and the present value of other future damages, would exceed such limitation and that the application of such limitation would be unfair, the court may award damages in excess of the limitation equal to the present value of additional future damages, but only for the loss of such excess future earnings, or such excess future medical and other health care costs, or both. For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7), C.R.S., and "past damages" has the same meaning as that set forth in section 13-64-202 (6), C.R.S. The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

Source: L. 90: Entire section added, p. 1543, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

By excluding injuries occurring to passengers on tramways from the liability provisions of this section, the general assembly clearly chose not to alter the common law standard of care applicable to ski lift safety: the highest degree of care commensurate with the practical operation of the lift, regardless of the season. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

The damages cap in this section limits recovery of compensatory damages in skiing-related wrongful death actions. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

The terms "injured" or "injury", as used in this section, must be broadly construed to include death. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

The phrase "any derivative claim by any other claimant" includes skiing-related wrongful death claims. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

The Ski Safety Act's cap on damages prevails, in its entirety, over the Wrongful Death Act's cap in § 13-21-203 and limits the amount of compensatory damages that may be recovered from a ski-area operator in a skiing-related wrongful death action to \$250,000. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

The Wrongful Death Act's felonious killing exception, which provides for unlimited compensatory damages, does not apply to skiing-related wrongful death actions. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

33-44-114. Inconsistent law or statute. Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls.

Source: L. 90: Entire section added, p. 1544, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

ANNOTATION

This provision expresses the general assembly's clear intent to abrogate the common law when it conflicts with the Ski Safety Act. Doering ex rel. Barrett v. Copper Mountain, Inc., 259 F.3d 1202 (10th Cir. 2001).

GREAT OUTDOORS PROGRAM

ARTICLE 60

Great Outdoors Colorado Program - Implementation

33-60-101.	Legislative declaration.	33-60-105.	Use of general fund moneys by state agencies - prohibition - cash funds.
33-60-102.	Definitions.	33-60-106.	Report required - general appropriations act.
33-60-103.	Distribution of net lottery proceeds - fourth quarter of fiscal year 1992-93 through fourth quarter of fiscal year 1997-98 - insufficiency - loan - repayment from net lottery proceeds.	33-60-107.	State board of the great outdoors Colorado trust fund.
33-60-104.	Distribution of net lottery proceeds beginning first quarter of fiscal year 1998-99.	33-60-108.	Bonds.
33-60-104.5.	Property acquired by state agencies with funds from the great outdoors Colorado trust fund - payments in lieu of taxes - restrictions - legislative declaration.	33-60-109.	Investments.
		33-60-110.	Exemption from taxation.
		33-60-111.	Bonds eligible for investment.
		33-60-112.	No action maintainable.
		33-60-113.	Judicial examination of powers, acts, proceedings, or contracts of the trust fund board.
		33-60-114.	Submission of ballot question regarding issuance of bonds.

33-60-101. Legislative declaration. (1) The general assembly hereby declares that the policies and procedures contained in this article are enacted to facilitate the orderly implementation of article XXVII of the state constitution, adopted at the 1992 general election. The general assembly further declares that the payment of debt service on all obligations due from the fourth quarter of fiscal year 1992-93 through the fourth quarter of fiscal year 1997-98 which are set forth in section 3 (1) (c) of article XXVII of the state constitution are intended to be paid in full from net lottery proceeds. Accordingly, the general assembly finds that legislation which sets forth an orderly method for ensuring that such payments are made in a timely manner is necessary and that the orderly implementation of article XXVII of the state constitution promotes the health, safety, security, and general welfare of the people of the state of Colorado.

(2) The general assembly further declares that the powers granted to the trust fund board to issue bonds and to pledge any moneys deposited or to be deposited into the trust fund for the payment of such bonds are in furtherance of and are consistent with the powers granted to the board created by article XXVII of the Colorado constitution.

Source: L. 93: Entire article added, p. 2019, § 1, effective June 9. **L. 2001:** Entire section amended, p. 904, § 1, effective June 1.

33-60-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Bond” means any bond, note, certificate, contract, or obligation for the repayment of borrowed money of the trust fund board authorized by this article.

(1.5) “Net lottery proceeds” means the proceeds of the lottery after the payment of the expenses of the state lottery division and any prizes for the lottery and after a sufficient amount of money has been reserved, as of the end of any fiscal quarter, to ensure the operation of the lottery for the ensuing fiscal quarter.

(2) “State agency” means: The state; every executive department, board, commission, committee, bureau, and office of the state; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government. However, such term does not include the state board of the great outdoors Colorado trust fund.

(3) “Trust fund” means the great outdoors Colorado trust fund created pursuant to section 2 of article XXVII of the state constitution.

(4) “Trust fund board” means the state board of the great outdoors Colorado trust fund established pursuant to section 6 of article XXVII of the state constitution.

Source: L. 93: Entire article added, p. 2019, § 1, effective June 9. L. 2001: (1) amended and (1.5) added, p. 904, § 2, effective June 1.

33-60-103. Distribution of net lottery proceeds - fourth quarter of fiscal year 1992-93 through fourth quarter of fiscal year 1997-98 - insufficiency - loan - repayment from net lottery proceeds. (1) Beginning with the proceeds from the fourth quarter of fiscal year 1992-93 through the fourth quarter of fiscal year 1997-98, the state treasurer shall make monthly distributions of net lottery proceeds as follows:

(a) To the conservation trust fund in the amounts provided in section 24-35-210 (4), C.R.S.; except that, beginning with the proceeds from the fourth quarter of fiscal year 1993-94 through the fourth quarter of fiscal year 1997-98, such distributions shall be made on a quarterly basis;

(a.5) To the division of parks and outdoor recreation in the amounts provided in section 24-35-210 (4), C.R.S.;

(b) (I) No later than September 1, 1993, the state treasurer shall pay the sum of six million dollars out of net lottery proceeds to the city and county of Denver as the final payment under the Colorado convention center contract between the state and the city and county of Denver in the original amount of \$36,000,000.

(II) In the event the trust fund board submits a resolution approved by a majority of the members of such board to the state treasurer authorizing that the payment specified in subparagraph (I) of this paragraph (b) be made before September 1, 1993, the state treasurer shall make the payment on that date. Copies of any such resolution shall be submitted to the general assembly and the city and county of Denver.

(c) To the debt service repayment account in the capital construction fund created pursuant to the provisions of section 24-75-302 (3), C.R.S., in an amount sufficient to defray all payments of principal and interest due on or before the date of the distribution for the payment of the following outstanding financial obligations of the state:

(I) 1992 master lease purchase agreement in the original principal amount of \$108,310,000, less the principal amount of \$5,700,000 or the appraised value, whichever is greater, for the Kipling facility building, which shall not be included. The 1992 master lease purchase agreement represents the refunding of the following certificates of participation:

(A) 1979 certificates of participation for the following projects: Wheat Ridge, Colorado project (issue A) in the original amount of \$6,895,000; Pueblo, Colorado project (issue B) in the original amount of \$5,320,000; and Grand Junction, Colorado project (issue C) in the original amount of \$4,735,000;

(B) 1986 master lease purchase agreement in the original amount of \$36,495,000;

(C) 1988 master lease purchase agreement in the original amount of \$63,025,000;

(D) 1989 master lease purchase agreement in the original amount of \$66,894,861.85; except that such refunding represents only that portion of the certificates which mature on and after November 1, 1999;

(II) 1990 master lease purchase agreement in the original amount of \$28,635,000; and

(III) 1989 master lease purchase agreement in the original amount of \$66,894,861.85, but only to the extent of payment for debt service from and including September 1, 1993, to and including November 30, 1998.

(2) (a) Pursuant to article XXVII of the state constitution, payments on the obligations set forth in subsection (1) of this section shall be made from the lottery fund created in section 24-35-210, C.R.S., pursuant to the following schedule of principal and interest payments:

PAYMENT DATE	CONVENTION CENTER	PRISON II	AURARIA CLASSROOM	HIGHWAY COMPUTERS	PRISON III	AURARIA BLEACHERS	REFUNDING ISSUE	TOTAL
09/01/93	6,000,000.00*							6,000,000.00
11/01/93		3,429,265.68	1,792,815.72	53,066.10	2,389,645.00	62,202.50	9,416,936.88	17,143,931.88
05/01/94		3,493,486.00	379,921.54	1,339,019.96	2,375,622.50	60,470.00	3,526,731.88	11,175,251.88
11/01/94		2,364,849.69	1,783,805.06	22,685.25	2,224,462.50	58,710.00	12,695,963.13	19,150,475.63
05/01/95		2,382,696.55	275,358.10	1,389,822.85	2,231,342.50	61,950.00	8,577,041.25	14,918,211.25
11/01/95		1,934,687.89	1,763,069.61		1,590,442.50		12,883,231.25	18,171,431.25
05/01/96		1,960,261.79	144,965.71		1,638,555.00		8,386,076.25	12,129,858.75
11/01/96		1,704,875.79	1,746,182.21		2,763,295.00		17,791,696.25	24,006,049.25
05/01/97		1,452,198.40	297,801.60		2,784,590.00		8,002,106.25	12,536,696.25
11/01/97		4,393,873.38	2,021,126.62		1,026,342.50		8,607,875.00	16,049,217.50
05/01/98		4,298,134.18	416,865.82		1,039,207.50		7,945,356.25	13,699,563.75
11/01/98			1,700,000.00		2,465,307.50		6,820,231.25	10,985,538.75
TOTAL	6,000,000.00	27,414,329.35	12,321,911.99	2,804,594.16	22,528,812.50	243,332.50	104,653,245.64	175,966,226.14

*Payment may be made prior to September 1, 1993, if authorized by the trust fund pursuant to section 33-60-103 (1) (b) (II).

(b) All principal and interest payment amounts set forth in paragraph (a) of this subsection (2) are subject to bank charges, arbitrage calculation, insurance premiums, and other miscellaneous charges which were not calculable at the time principal and interest payment amounts were determined and are determined and payable in the year in which any given payment is due. Such charges are a part of each payment due pursuant to the certificates of participation enumerated in this section.

(3) Subject to the provisions of subsection (4) of this section, remaining net lottery proceeds, if any, shall be deposited no less frequently than quarterly in trust for the trust fund board. Deposits in trust for the trust fund board, or a portion thereof, may be deferred only to the extent that payments on certificates of participation pursuant to paragraph (c) of subsection (1) of this section are due on or before the date of distribution or balances due on loans authorized pursuant to subsection (4) of this section are outstanding on the date of distribution.

(4) Pursuant to amendment XXVII of the state constitution, the sum of all distributions of net lottery proceeds made to the capital construction fund from the fourth quarter of fiscal year 1992-93 through the fourth quarter of fiscal year 1997-98 shall include payment in full of all debt service due from and including September 1, 1993, to and including November 30, 1998, on all obligations set forth in section 3 (1) (c) of article XXVII of the state constitution. In the event net lottery proceeds are insufficient to defray payments of principal and interest on the obligations according to the schedule set forth in subsection (2) of this section, the state treasurer shall transfer sufficient funds in an amount not to exceed the amount of such insufficiency to the debt service repayment account in the capital construction fund created by section 24-75-302 (3), C.R.S., for the purpose of defraying such payments. Such transfer shall be in the form of a loan from moneys in the general fund not immediately required to be disbursed and shall bear interest at the earnings rate calculated monthly by the state treasurer. In the event any such loan is required to be made, succeeding distributions of net lottery proceeds shall be made in accordance with subsections (1) and (2) of this section. Thereafter, net lottery proceeds in an amount not to exceed the outstanding amount of the loan plus interest accrued shall be transferred to the debt service repayment account in the capital construction fund created by section 24-75-302 (3), C.R.S., for the purpose of repaying the general fund for such loan. No distribution shall be made pursuant to subsection (3) of this section until the principal and interest on such loan is repaid in full.

Source: L. 93: Entire article added, p. 2020, § 1, effective June 9. L. 94: (1)(a) amended and (1)(a.5) added, p. 502, § 2, effective March 31.

ANNOTATION

Payments made under subsection (1)(c) on the 1992 refunding of certain state obligations may be paid from net proceeds of the state lottery without violating article XXVII of the state constitution. In re Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

Savings resulting from the 1992 refunding of certain state obligations do not accrue to the great outdoors Colorado trust fund but instead to the capital construction fund. In re

Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

The general assembly's action in delaying the final payment on the Colorado convention center contract so that it would fall within the window prescribed by article XXVII of the state constitution did not violate the constitution. In re Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

33-60-104. Distribution of net lottery proceeds beginning first quarter of fiscal year 1998-99. (1) For the first quarter of fiscal year 1998-99 and for each quarter thereafter, the state treasurer shall distribute net lottery proceeds as follows:

(a) Forty percent to the conservation trust fund for distribution to municipalities and counties and other eligible entities for parks, recreation, and open space purposes;

(b) Ten percent to the division of parks and wildlife for the acquisition, development, and improvement of new and existing state parks, recreation areas, and recreational trails; and

(c) All remaining net lottery proceeds in trust to the trust fund board; except that, in any state fiscal year in which the portion of net lottery proceeds which would otherwise be given in trust to the trust fund board exceeds the adjusted amount of thirty-five million dollars as determined by the state treasurer in accordance with subsection (2) of this section, the net lottery proceeds in excess of such adjusted amount shall be allocated to the general fund.

(2) Beginning with the first quarter of fiscal year 1998-99 and each fiscal year thereafter, the base amount of thirty-five million dollars shall be adjusted annually based on the decrease or increase, if any, in the consumer price index for the Denver metropolitan area, for the preceding calendar year reported by the United States bureau of labor statistics, or its successor index. Such adjustment shall reflect changes, if any, in such index from the actual consumer price index for the Denver metropolitan area, for the calendar year 1992.

Source: L. 93: Entire article added, p. 2025, § 1, effective June 9.

33-60-104.5. Property acquired by state agencies with funds from the great outdoors Colorado trust fund - payments in lieu of taxes - restrictions - legislative declaration. (1) (a) The general assembly hereby finds and declares that:

(I) The withdrawal of property from county tax rolls as a result of the purchase of interests in real property by state agencies with funds provided from the great outdoors Colorado trust fund may have a significant financial impact on the counties and other political subdivisions in which such property is located;

(II) When state agencies acquire interests in real property with moneys from the great outdoors Colorado trust fund and remove them from the tax rolls, the agencies acquiring the interests shall make payments in lieu of taxes to the counties in which the property underlying the interest is located in order to alleviate the financial burdens such acquisitions create; and

(III) Section 10 of article XXVII of the state constitution provides that payments in lieu of taxes for acquisitions of property pursuant to article XXVII shall be made from moneys made available by the great outdoors Colorado trust fund.

(b) It is therefore the intent of this section to address the financial impact resulting from acquisitions of interests in real property by state agencies and to implement section 10 of article XXVII of the state constitution by establishing a mechanism for payments in lieu of taxes to be made from the great outdoors Colorado trust fund.

(2) Whenever a state agency acquires an interest in real property using moneys from the trust fund pursuant to article XXVII of the state constitution and the interest is no longer subject to property taxation as a result of such acquisition, the agency that holds the interest shall pay annually to the treasurer of the county in which the property is located a payment in lieu of taxes that shall not exceed the amount of taxes that would be due if the interest was taxable.

(3) (a) In accordance with section 10 of article XXVII of the state constitution and subject to the provisions of this section, the annual payments described in subsection (2) of this section shall be made with funds made available from the trust fund in the manner set forth in this subsection (3).

(b) Each year during the regular tax assessment period, the board of county commissioners of each county in which a real property interest described in subsection (2) of this section is located shall provide to each state agency that holds such real property interests the following information in the same manner as such information is provided to any other owner of property in the county:

(I) The current assessed value of each real property interest, expressed in dollars;

(II) The amount of the payment in lieu of taxes due on each real property interest, based on the value and tax rate that would be applicable to the real property interest if it were taxable; and

(III) The date the payment in lieu of taxes is due for such real property interests, based on the date property taxes within the county are due.

(c) Each state agency that receives information from a board of county commissioners pursuant to this subsection (3) shall promptly forward such information to the trust fund board. In addition, for each real property interest reported, the agency shall provide

information to the trust fund board concerning the portion of the total acquisition cost of the interest that was paid with moneys from the trust fund.

(d) The trust fund board shall pay from the trust fund to the reporting state agency that portion of the payment in lieu of taxes that is equivalent to the portion of the total acquisition cost of the interest that was paid with moneys from the trust fund. The trust fund board shall be responsible for ensuring that timely payment is made to each state agency.

(e) Each state agency that receives a payment from the trust fund board pursuant to this subsection (3) shall promptly transmit the payment, along with any other amounts payable by the agency as part of the payment in lieu of taxes and appropriated by the general assembly, to the county entitled to receive it.

(4) The treasurer of each county that receives a payment in lieu of taxes pursuant to this section shall pay over to each school district, special district, or other political subdivision in which a real property interest described in subsection (2) of this section is located its appropriate share of the total payment; except that the treasurer may deduct the costs incurred by the treasurer in administering this subsection (4).

(5) Every state agency that makes a payment in lieu of taxes that will be distributed, in whole or in part, to a school district and every school district that receives a payment in lieu of taxes shall report the amount paid or received to the state board of education.

(6) The general assembly may make appropriations for the purpose of funding a state agency's share of payments in lieu of taxes to any county entitled to receive such payments. Appropriations concerning lands purchased with wildlife cash or other wildlife moneys shall be made from the wildlife cash fund. Appropriations concerning lands purchased with parks and outdoor recreation cash or other parks and outdoor recreation moneys shall be made from the parks and outdoor recreation cash fund.

(7) In the event a state agency does not receive funds from the trust fund board to make the payments in lieu of taxes described in this section by the date that property taxes within the county are due, the agency shall not be authorized to accept any grants or other funding assistance from the trust fund board for acquisition of interests in real property until such payments are brought up to date.

(8) Nothing in this section shall be construed to alter the requirements of section 30-25-302, C.R.S., pertaining to property acquired by the division of parks and wildlife without assistance from the trust fund board.

Source: L. 96: Entire section added, p. 743, § 1, effective May 22. L. 2011: (6) amended, (SB 11-208), ch. 293, p. 1394, § 26, effective July 1.

33-60-105. Use of general fund moneys by state agencies - prohibition - cash funds.

The general assembly finds that the enactment of article XXVII of the state constitution dedicates a significant amount of moneys previously available to meet other state needs to the great outdoors Colorado trust fund and provides for the unrestricted expenditure of such moneys by the trust fund board for the preservation, protection, enhancement, and management of the state's wildlife, park, river trail, and open space heritage. Accordingly, no general fund moneys shall be used by any state agency for the purpose of funding necessary or incidental management costs which result from a distribution of moneys, land, or any other asset of the great outdoors Colorado trust fund, unless otherwise approved by the general assembly. Moneys derived from user fees and other revenue sources which are generated from programs and completed facilities funded by the great outdoors Colorado trust fund board shall not be transferred or revert to the general fund. Moneys generated from such programs and facilities at state parks shall be credited to the parks and outdoor recreation cash fund created by section 33-10-111 (1). All such moneys shall be subject to annual appropriation by the general assembly.

Source: L. 93: Entire article added, p. 2025, § 1, effective June 9.

33-60-106. Report required - general appropriations act. On or before September 1 of each year beginning with 1993, each state agency that has received or is scheduled to

receive moneys from the great outdoors Colorado trust fund shall provide the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee with a detailed accounting of all such moneys received or to be received along with a detailed accounting of how such moneys have been or will be expended. For informational purposes, the expenditure of such moneys may be indicated in the annual general appropriation act.

Source: L. 93: Entire article added, p. 2026, § 1, effective June 9. **L. 2002:** Entire section amended, p. 877, § 5, effective August 7. **L. 2003:** Entire section amended, p. 2014, § 110, effective May 22.

33-60-107. State board of the great outdoors Colorado trust fund. (1) Public members of the state board of the great outdoors Colorado trust fund shall be appointed by the governor. Such appointments shall be subject to the consent of the senate.

(2) Members of the state board of the great outdoors Colorado trust fund shall be subject to removal pursuant to section 6 of article IV of the Colorado constitution.

(3) In addition to its other powers under article XXVII of the Colorado constitution and this article, the trust fund board shall have the power to issue bonds to finance any expenditure to address urgent and permanent land acquisition priorities, including the acquisition of perpetual conservation easements, that may be made from the trust fund and may pledge all or any portion of the moneys deposited or to be deposited into the trust fund for the payment of the bonds. The owners or holders of the bonds may not look to any other revenues of the state other than the trust fund for the payment of the bonds. The bonds shall be issued on the terms and subject to the conditions set forth in section 33-60-108. Notwithstanding any other provision of this article, the bonds may only be issued if the registered electors of the state approve the ballot question submitted at the November 2001 statewide election pursuant to section 33-60-114. The amount of any debt incurred and the repayment costs for any bonds issued by the board shall not exceed the maximum amounts of debt and repayment costs approved by the voters in such election.

Source: L. 93: Entire article added, p. 2026, § 1, effective June 9. **L. 2001:** (3) added, p. 905, § 3, effective June 1. **L. 2007:** (3) amended, p. 2047, § 88, effective June 1.

33-60-108. Bonds. (1) The trust fund board may, from time to time, issue bonds to finance any expenditure to address urgent and permanent land acquisition priorities, including the acquisition of perpetual conservation easements, that may be made from the trust fund. The bonds shall be issued pursuant to a resolution of the trust fund board and shall be payable solely out of all or any portion of the moneys deposited or to be deposited into the trust fund as specified by the trust fund board.

(2) As provided in the resolution of the trust fund board under which the bonds are authorized to be issued or as provided in a trust indenture between the trust fund board and any commercial bank or trust company having trust powers, the bonds may:

(a) Be executed and delivered by the trust fund board at such times as may be provided in the resolution or indenture;

(b) Be in such form and denominations and include such terms and maturities as may be provided in the resolution or indenture;

(c) Be subject to optional or mandatory redemption prior to maturity with or without a premium;

(d) Be in fully registered form or bearer form registrable as to principal or interest or both or be in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of an officer of the trust fund board;

(e) Bear such conversion privileges as may be provided in the resolution or indenture;

(f) Be payable in such installments and at such times not exceeding twenty years from the date thereof;

(g) Be payable at such place or places whether within or without the state;

(h) Bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula, or as determined by the trust fund board or its agents, without regard to any interest rate limitation appearing in any other law of the state;

(i) Be subject to purchase at the option of the holder or the trust fund board and evidenced in such manner;

(j) Be executed by the officers of the trust fund board, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which signatures may be either of an officer of the trust fund board or of an agent authenticating the same; and

(k) Contain such other provisions not inconsistent with this article.

(3) The bonds may be sold at public or private sale at such price, in such manner, and at such times as determined by the trust fund board, and the trust fund board may pay all fees, expenses, and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the trust fund board. Any outstanding bonds may be refunded by the trust fund board pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments. The trust fund board may apply any or all of the provisions of articles 55 and 57 of title 11, C.R.S., in connection with the issuance of the bonds.

(4) The resolution or trust indenture authorizing the issuance of the bonds may pledge all or any portion of the moneys deposited or to be deposited into the trust fund, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the trust fund board deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions that the trust fund board deems appropriate for the security of the holders of the bonds, including, but not limited to, provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price.

(5) Any pledge of moneys, revenues, or property for the payment of the bonds made by the trust fund board or by any other person shall be valid and binding from the time the pledge is made. The pledge shall be valid and binding as of the time it is made and the moneys, revenues, or property so pledged shall immediately be subject to the lien of the pledge without any physical delivery, filing, or further act. The lien of the pledge and the obligations of the trust fund board and any other person to perform the contractual provisions made in the instrument authorizing the issuance of the bonds shall be valid and binding against all persons having claims of any kind in tort, contract, or otherwise against the trust fund board and any other person, irrespective of whether such claiming party has notice of such lien and irrespective of whether such instrument is recorded or filed, and shall, except as otherwise provided in the instrument authorizing the issuance of the bonds or making the pledge, have priority over any and all obligations and liabilities of the trust fund board. The creation, perfection, enforcement, and priority of the pledge of money, revenues, or property for the payment of the bonds shall be governed by this article and the instrument authorizing the issuance of the bonds.

(6) None of the directors or employees of the trust fund board or any person executing the bonds shall be liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

(7) The trust fund board may purchase its bonds out of any available funds and may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with the holders thereof.

Source: L. 2001: Entire section added, p. 905, § 4, effective June 1.

33-60-109. Investments. (1) Except as provided in subsection (2) of this section, any proceeds from the issuance of bonds by the trust fund board that are credited to the trust fund shall be invested in the same manner as all other moneys credited to the trust fund as provided by law.

(2) The trust fund board may direct a corporate trustee that holds proceeds from the issuance of bonds to invest or deposit the proceeds in investments or deposits other than those authorized for the trust fund if the trust fund board determines, by resolution, that the investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits authorized for the trust fund, and the investment will assist the trust fund board in making expenditures in furtherance of the great outdoors Colorado program.

Source: L. 2001: Entire section added, p. 907, § 4, effective June 1.

33-60-110. Exemption from taxation. Any bonds issued by the trust fund board and the transfer of and the income from any bonds issued by the trust fund board are exempt from all taxation and assessments in the state. In the resolution authorizing the bonds, the trust fund board may waive the exemption from federal income taxation for interest on the bonds.

Source: L. 2001: Entire section added, p. 908, § 4, effective June 1.

33-60-111. Bonds eligible for investment. All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued by the trust fund board pursuant to section 33-60-108. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in the bonds only if the bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 2001: Entire section added, p. 908, § 4, effective June 1.

33-60-112. No action maintainable. An action or proceeding at law or in equity to review any acts or proceedings or to question the validity or enjoin the performance of any act or proceedings or the issuance of any bonds issued pursuant to section 33-60-108, or for any other relief against or from any acts or proceedings done in connection with the issuance of such bonds, whether based upon irregularities or jurisdictional defects, shall not be maintained unless commenced within thirty days after the performance of the act or proceedings or the effective date thereof, whichever occurs first, and is thereafter perpetually barred.

Source: L. 2001: Entire section added, p. 908, § 4, effective June 1.

33-60-113. Judicial examination of powers, acts, proceedings, or contracts of the trust fund board. In its discretion, the trust fund board may file a petition at any time in the district court in and for any county in the state praying for a judicial examination and determination of any power conferred to the trust fund board, any revenue-raising power exercised or that may be exercised by the trust fund board, or any act, proceeding, or contract of the trust fund board, whether or not the contract has been executed, relating to the issuance of bonds by the trust fund board pursuant to section 33-60-108. The judicial examination and determination shall be conducted in substantially the manner set forth in section 32-4-540, C.R.S.; except that the notice required shall be published once a week for three consecutive weeks and the hearing shall be held not less than thirty days nor more than forty days after the filing of the petition.

Source: L. 2001: Entire section added, p. 908, § 4, effective June 1.

33-60-114. Submission of ballot question regarding issuance of bonds. (1) The secretary of state shall submit a ballot question to a vote of the registered electors of the state of Colorado at the statewide election to be held in November 2001 for their approval

or rejection. Each elector voting at said November election shall cast a vote as provided by law either "Yes" or "No" on the proposition: "Shall the state board of the great outdoors Colorado trust fund debt be increased \$115,000,000, with a maximum repayment cost of \$180,000,000, with no increase in any taxes, for the purpose of enhancing the great outdoors Colorado trust fund's ability to address urgent and permanent land acquisition priorities, including the acquisition of perpetual conservation easements, in order to protect the state's wildlife, park, river, trail, and open space heritage through the issuance of bonds, and shall earnings on the proceeds of such bonds constitute a voter-approved revenue change?"

(2) The votes cast for the adoption or rejection of the question submitted pursuant to subsection (1) of this section shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

Source: L. 2001: Entire section added, p. 909, § 4, effective June 1.

Editor's note: The ballot question specified in subsection (1) was referred to the voters on November 6, 2001, and was approved by the voters with the following vote count:

FOR:	478,501
AGAINST:	352,585

TITLE 34

MINERAL RESOURCES

12 JULY

WINDY AND WARM

TITLE 34

MINERAL RESOURCES

Cross references: For leases with option to purchase oil, gas, and minerals, see article 42 of title 38; for leases of future contingent interests in oil, gas, and minerals, see article 43 of title 38; for valuation of mines and of oil and gas leaseholds and lands, see articles 6 and 7 of title 39; for commissioner of mines as executive director of the department of natural resources, see §§ 24-1-124 (1) and 24-33-102 (1).

GEOLOGICAL SURVEY

Art. 1. Geological Survey, 34-1-100.5 to 34-1-305.

JOINT REVIEW PROCESS

Art. 10. Colorado Joint Review Process (Repealed).

MINES AND MINERALS

Health and Safety

- Art. 20. Mining - Legislative Declaration and Definitions, 34-20-101 to 34-20-104.
- Art. 21. Office of Active and Inactive Mines, 34-21-101 to 34-21-110.
- Art. 22. Coal Mine Board of Examiners, 34-22-101 to 34-22-113.
- Art. 23. Training and Retraining Programs, 34-23-101 to 34-23-105.
- Art. 24. Duties and Responsibilities of Operator, 34-24-101 to 34-24-112.
- Art. 25. Jurisdiction of the Courts, 34-25-101.
- Art. 26. Roof Control (Repealed).
- Art. 27. Explosives - Coal Mines (Repealed).
- Art. 28. Electricity (Repealed).
- Art. 29. Safety Regulations (Repealed).
- Art. 30. Maps (Repealed).
- Art. 31. Tunnels - Rights-of-way, 34-31-101 to 34-31-103.

Mined Land Reclamation

- Art. 32. Colorado Mined Land Reclamation Act, 34-32-101 to 34-32-127.
- Art. 32.5. Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 to 34-32.5-125.
- Art. 33. Colorado Surface Coal Mining Reclamation Act, 34-33-101 to 34-33-137.
- Art. 34. Abandoned Mine Reclamation Program, 34-34-101 and 34-34-102.

Metal Mines

- Art. 40. Bureau of Mines (Repealed).
- Art. 41. Mining Industrial Development Board (Repealed).
- Art. 42. Mining District Laws, 34-42-101 to 34-42-104.
- Art. 43. Claims - How Located, 34-43-101 to 34-43-116.
- Art. 44. Tenants in Common of Mines, 34-44-101 to 34-44-110.
- Art. 45. Offenses, 34-45-101 to 34-45-107.
- Art. 46. Mining Equipment - Ownership, 34-46-101 to 34-46-106.
- Art. 47. Safety Regulations (Repealed).
- Art. 48. Easements, 34-48-101 to 34-48-111.
- Art. 49. Surveys, 34-49-101 to 34-49-107.
- Art. 50. Drainage, 34-50-101 to 34-50-109.

- Art. 51. Mine Drainage Districts, 34-51-101 to 34-51-124.
 Art. 52. Ore Buyers' Licenses (Repealed).
 Art. 53. Sales of Ore, 34-53-101 to 34-53-112.
 Art. 54. Memoranda of Ore Sales, 34-54-101 to 34-54-107.

OIL AND NATURAL GAS

Conservation and Regulation

- Art. 60. Oil and Gas Conservation, 34-60-101 to 34-60-129.
 Art. 61. Oil Wells and Boreholes, 34-61-101 to 34-61-108.
 Art. 62. Inspection of Oil Wells (Repealed).
 Art. 63. Royalties Under Federal Leasing, 34-63-101 to 34-63-105.
 Art. 64. Underground Storage, 34-64-101 to 34-64-107.

Geothermal Resources

- Art. 70. Geothermal Resources (Repealed).

GEOLOGICAL SURVEY

ARTICLE 1

Geological Survey

PART 1

COLORADO GEOLOGICAL SURVEY

- 34-1-100.5. Transfer to Colorado school of mines - memorandum of understanding - effective date - repeal.
 34-1-101. Geological survey created - purpose - avalanche information center created.
 34-1-102. State geologist - appointment - qualifications.
 34-1-103. Objectives of survey - duties of state geologist.
 34-1-104. Employees.
 34-1-104.5. Legislative declaration.
 34-1-105. Fees - fee adjustments - geological survey cash fund - created.
 34-1-106. Geological survey - study - relocation - repeal. (Repealed)

PART 2

GEOLOGY

- 34-1-201. Definitions.
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PART 3

PRESERVATION OF COMMERCIAL MINERAL DEPOSITS

- 34-1-301. Legislative declaration.
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 34-1-303. Geological survey to make study.
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PART 1

COLORADO GEOLOGICAL SURVEY

Editor's note: (1) This part 1 was numbered as article 1 of chapter 64, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 1967, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1967, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 34-1-100.5 (3) provides for the possible repeal of this part 1 and part 2 of this article, effective January 31, 2013, if certain conditions are met.

34-1-100.5. Transfer to Colorado school of mines - memorandum of understanding - effective date - repeal. (1) The executive director may develop and enter into a memorandum of understanding with the president of the Colorado school of mines pursuant

to section 23-41-201, C.R.S., concerning the transfer of the operation and functions of the Colorado geological survey to the Colorado school of mines, effective January 31, 2013.

(2) Except as provided in subsection (3) of this section, this part 1 and part 2 of this article are repealed, effective January 31, 2013.

(3) If the president of the Colorado school of mines does not notify the revisor of statutes in writing before January 31, 2013, pursuant to section 23-41-209, C.R.S., that the Colorado school of mines has entered into a memorandum of understanding with the department of natural resources, consistent with this part 2, affirming the transfer of the powers, duties, and functions of the geological survey and the office of the state geologist from the department of natural resources to the Colorado school of mines, then this part 1 and part 2 of this article are not repealed, and this section is repealed, effective January 31, 2013.

Source: L. 2012: Entire section added, (HB 12-1355), ch. 247, p. 1196, § 2, effective June 4.

34-1-101. Geological survey created - purpose - avalanche information center created. (1) There is hereby established the Colorado geological survey, which is a division of the department of natural resources. The purpose of the survey is to coordinate and encourage by use of appropriate means the full development of the state's natural resources, as the same are related to the geological processes that affect realistic development of human and mineral utilization and conservation practices and needs in the state of Colorado, all of which are designed to result in an ultimate benefit to the citizens of the state.

(2) There is hereby created, within the Colorado geological survey, the Colorado avalanche information center to carry out a program of avalanche forecasting and education.

Source: L. 67: R&RE, p. 837, § 1. **C.R.S. 1963:** § 64-1-1. **L. 68:** p. 130, § 147. **L. 95:** Entire section amended, p. 186, § 1, effective April 7.

34-1-102. State geologist - appointment - qualifications. The executive director of the department of natural resources shall appoint a state geologist, subject to the state constitution and the state personnel system laws. The state geologist shall be the director of the Colorado geological survey. The state geologist shall be a professional geologist, as defined in section 34-1-201 (3), and shall have professional, managerial, supervisory, practical, and technical experience and knowledge in the use of geology, earth sciences, and natural resource planning and management. The office of the state geologist shall be located and headquartered close to or as near as possible to the offices and headquarters of the other agencies and divisions under the executive director of the department of natural resources.

Source: L. 67: R&RE, p. 837, § 1. **C.R.S. 1963:** § 64-1-2. **L. 92:** Entire section amended, p. 1920, § 4, effective July 1.

34-1-103. Objectives of survey - duties of state geologist. (1) The Colorado geological survey shall function to provide assistance to and cooperate with the general public, industries, and agencies of state government, including institutions of higher education, in pursuit of the following objectives, the priorities of which shall be determined by mutual consent of the state geologist and the executive director of the department of natural resources:

- (a) To assist, consult with, and advise existing state and local governmental agencies on geologic problems;
- (b) To promote economic development of mineral resources;
- (c) To conduct studies to develop geological information;
- (d) To inventory and analyze the state's mineral resources as to quantity, chemical composition, physical properties, location, and possible use;
- (e) To collect and preserve geologic information;

(f) To advise the state and act as liaison agency on transactions dealing with natural resources between state agencies and with other states and the federal government on common problems and studies;

(g) To evaluate the physical features of Colorado with reference to present and potential human and animal use;

(h) To prepare, publish, and distribute reports, maps, and bulletins when necessary to achieve the purposes of this part 1, but in accordance with section 24-1-136, C.R.S.;

(i) To determine areas of natural geologic hazards that could affect the safety of or economic loss to the citizens of Colorado;

(j) To advise the state engineer in the promulgation of rules and regulations pursuant to article 90.5 of title 37, C.R.S., and to provide other governmental agencies with technical assistance regarding geothermal resources as needed;

(k) To promote safety by reducing the impact of avalanches on recreation, industry, and transportation in the state through a program of forecasting and education conducted by the Colorado avalanche information center.

(2) The duties of the state geologist shall be to fulfill the objectives of this part 1 and, together with the employees of the survey, work for the maximum beneficial and most efficient use of the geologic processes for the protection of and economic benefit to the citizens of Colorado.

(3) The state geologist shall conduct a study and prepare a map or maps as provided in section 34-1-303.

(4) The state geologist shall, upon receiving a preliminary plan pursuant to section 30-28-136 (1) (i), C.R.S., or a major activity notice pursuant to section 31-23-225, C.R.S., review such plan or notice to determine whether the development or activity which is the subject of such plan or notice will interfere with the extraction of commercial mineral deposits as defined in section 34-1-302. If the state geologist determines that a potential for such interference exists, he shall, within twenty-four days after mailing such plan or notice, notify the appropriate board of county commissioners or governing body of a municipality of the existence of such potential interference.

(5) The state geologist shall administer the provisions of section 25-15-202 (4) (b), C.R.S., requiring the Colorado geological survey to make a recommendation on the geological suitability of proposed hazardous waste disposal sites for land disposal of hazardous waste and the provisions of section 25-15-216, C.R.S., requiring the Colorado geological survey to conduct a study of the geological suitability of areas of the state for hazardous waste disposal sites.

(6) The state geological survey shall prepare an annual report describing the status of the mineral industry and describing current influences affecting the growth and viability of the mineral industry in the state, and setting forth recommendations to foster the industry. This report and recommendations shall be submitted to the executive director of the department of natural resources.

Source: L. 67: R&RE, p. 837, § 1. C.R.S. 1963: § 64-1-3. L. 73: p. 1053, § 16. L. 74: (1)(j) added, p. 315, § 7, effective May 17. L. 75: (4) amended, p. 1272, § 10, effective July 1. L. 83: (5) amended, p. 1105, § 27, effective June 3; (1)(j) amended, p. 1424, § 3, effective June 10; (1)(h) amended, p. 841, § 66, effective July 1. L. 92: (6) added, p. 1921, § 5, effective July 1. L. 95: (1)(k) added, p. 186, § 2, effective April 7. L. 2006: (6) amended, p. 214, § 6, effective August 7.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974).

34-1-104. Employees. The state geologist shall employ such assistants and personnel as may be deemed necessary to carry out the purposes of this part 1, subject to the state constitution and the state personnel system laws. Such personnel should include, but shall

not be limited to, qualified professional geologists or geological engineers to cover at least four categories of specialties in mineral deposits, water and hydrology, petroleum and mineral fuels, and engineering geology.

Source: L. 67: R&RE, p. 838, § 1. C.R.S. 1963: § 64-1-4.

Cross references: For the appointment of officers, assistants, and employees, see §§ 24-1-108 and 24-2-102; for the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

34-1-104.5. Legislative declaration. (1) It is the intent of the general assembly that sufficient funds be provided to cover the direct costs of a base staff and their operating expenses to assure functional continuity of the survey as provided by statute. The survey shall make appropriate charges for preparation and reproduction of reports, maps, and publications; except that the survey shall not directly compete with consultants by entering into contracts with the general public and industries for providing geological and related services.

(2) It is the intent of the general assembly that the Colorado geological survey place primary emphasis on the statutory objectives of recognition and mitigation of geologic risks affecting public health and safety and promotion of economic development of the mineral resources, including, but not limited to, metals, oil, gas, coalbed methane, and aggregate, of Colorado. Such work shall require appropriate consideration to public safety and environmental concerns. Economic development projects proposed or undertaken shall involve basic and applied geologic research and mapping similar to that undertaken by geological surveys in other states and be designed to encourage resource exploration and development by industry. The Colorado geological survey shall not undertake economic development projects that directly compete with the private sector, but shall produce basic data, research reports, and maps useful to consultants and industry. Economic development projects undertaken may be funded by private foundations and federal agencies under joint agreements approved by the executive director of the department of natural resources, or by industrial consortia or agencies of other states upon review and approval by the Colorado geological survey advisory committee and the executive director of the department of natural resources, or by the general fund.

Source: L. 83: Entire section added, p. 1304, § 1, effective July 1. L. 92: Entire section amended, p. 1921, § 6, effective July 1. L. 96: (2) amended, p. 1220, § 15, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

34-1-105. Fees - fee adjustments - geological survey cash fund - created.

(1) (a) The Colorado geological survey is authorized to enter into agreements to provide services to the general public, industries, and units of local government and to establish and collect fees to recover direct costs of providing said services pursuant to sections 24-65.1-302 and 30-28-136, C.R.S., and section 34-1-103 or pursuant to agreement; except that this provision shall apply only to those services rendered upon items which a unit of local government is required by statute to submit for review or for such other services as are requested pursuant to an agreement.

(b) The Colorado geological survey is authorized to establish and collect fees to recover direct costs of providing services to other agencies of state government pursuant to section 34-1-103.

(2) (a) The Colorado geological survey shall propose, as part of its annual budget request, an adjustment in the amount of each fee which it is authorized to collect pursuant to this section.

(b) Based upon the appropriation made in the general appropriations bill and subject to the executive director of the department of natural resources, the Colorado geological

survey shall adjust its fees so that the revenue generated from said fees approximates its direct costs. Such fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the Colorado geological survey shall be transmitted to the state treasurer, who shall credit the same to the geological survey cash fund, which fund is hereby created. All moneys credited to the geological survey cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund. The moneys credited to the geological survey cash fund shall be available for appropriation by the general assembly to the Colorado geological survey in the general appropriations bill.

(c) Beginning July 1, 1984, and each July 1 thereafter, whenever moneys appropriated to the Colorado geological survey during the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the Colorado geological survey for the next fiscal year, and such amount shall not be raised from fees collected by the Colorado geological survey. If a supplemental appropriation is made to the Colorado geological survey for its activities, the fees of the Colorado geological survey, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the Colorado geological survey in the general appropriations bill for the services specified in this section shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected pursuant to this section.

Source: L. 83: Entire section added, p. 1304, § 1, effective July 1.

34-1-106. Geological survey - study - relocation - repeal. (Repealed)

Source: L. 2004: Entire section added, p. 1988, § 1, effective June 5.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2005. (See L. 2004, p. 1988.)

PART 2

GEOLOGY

Editor's note: Section 34-1-100.5 (3) provides for the possible repeal of part 1 of this article and this part 2, effective January 31, 2013, if certain conditions are met.

34-1-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Geologist" means a person engaged in the practice of geology.

(2) "Geology" means the science which treats of the earth in general; the earth's processes and its history; investigation of the earth's crust and the rocks and other materials which compose it; and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gasses, and other materials for the use of mankind.

(3) "Professional geologist" is a person who is a graduate of an institution of higher education which is accredited by a regional or national accrediting agency, with a minimum of thirty semester (forty-five quarter) hours of undergraduate or graduate work in a field of geology and whose postbaccalaureate training has been in the field of geology with a specific record of an additional five years of geological experience to include no more than two years of graduate work.

Source: L. 73: p. 610, § 1. **C.R.S. 1963:** § 51-3-1.

34-1-202. Reports containing geologic information. Any report required by law or by rule and regulation, and prepared as a result of or based on a geologic study or on geologic data, or which contains information relating to geology, as defined in section 34-1-201 (2),

and which is to be presented to or is prepared for any state agency, political subdivision of the state, or recognized state or local board or commission, shall be prepared or approved by a professional geologist, as defined in section 34-1-201 (3).

Source: L. 73: p. 610, § 1. C.R.S. 1963: § 51-3-2.

PART 3

PRESERVATION OF COMMERCIAL MINERAL DEPOSITS

34-1-301. Legislative declaration. (1) The general assembly hereby declares that:

- (a) The state's commercial mineral deposits are essential to the state's economy;
- (b) The populous counties of the state face a critical shortage of such deposits;
- (c) Such deposits should be extracted according to a rational plan, calculated to avoid waste of such deposits and cause the least practicable disruption of the ecology and quality of life of the citizens of the populous counties of the state.

(2) The general assembly further declares that, for the reasons stated in subsection (1) of this section, the regulation of commercial mineral deposits, the preservation of access to and extraction of such deposits, and the development of a rational plan for extraction of such deposits are matters of concern in the populous counties of the state. It is the intention of the general assembly that the provisions of this part 3 have full force and effect throughout such populous counties, including, but not limited to, the city and county of Denver and any other home rule city or town within each such populous county but shall have no application outside such populous counties.

Source: L. 73: p. 1046, § 1. C.R.S. 1963: § 92-36-1.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974).

Nothing in the geological survey act purports to grant to a surface owner the right as against the mineral owner to conduct tests and

gather information concerning the existence and extent of commercial mineral deposits without the consent of the owner of the mineral estate. *Grynberg v. City of Northglenn*, 739 P.2d 230 (Colo. 1987).

34-1-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Commercial mineral deposit" means a natural mineral deposit of limestone used for construction purposes, coal, sand, gravel, and quarry aggregate, for which extraction by an extractor is or will be commercially feasible and regarding which it can be demonstrated by geologic, mineralogic, or other scientific data that such deposit has significant economic or strategic value to the area, state, or nation.

(2) "Extractor" means any individual, partnership, association, or corporation which extracts commercial mineral deposits for use in the business of selling such deposits or for use in another business owned by the extractor or any department or division of federal, state, county, or municipal government which extracts such deposits.

(3) "Populous county or populous counties of the state" means any county or city and county having a population of sixty-five thousand inhabitants or more according to the latest federal decennial census.

Source: L. 73: p. 1047, § 1. C.R.S. 1963: § 92-36-2.

34-1-303. Geological survey to make study. After July 1, 1973, the Colorado geological survey shall contract for a study of the commercial mineral deposits in the populous counties of the state in order to identify and locate such deposits. Such study shall be of sand, gravel, and quarry aggregate, and shall be completed on or before July 1, 1974, and

shall include a map or maps of the state showing such commercial mineral deposits, copies of which may be generally circulated. Any commercial mineral deposits discovered subsequent to July 1, 1974, may be, upon discovery, included in such study.

Source: L. 73: p. 1047, § 1. C.R.S. 1963: § 92-36-3.

34-1-304. Master plan for extraction. (1) The county planning commission for unincorporated areas and for cities and towns having no planning commission or the planning commission for each city and county, city, or town, within each populous county of the state, shall, with the aid of the maps from the study conducted pursuant to section 34-1-303, conduct a study of the commercial mineral deposits located within its jurisdiction and develop a master plan for the extraction of such deposits, which plan shall consist of text and maps. In developing the master plan, the planning commission shall consider, among others, the following factors:

(a) Any system adopted by the Colorado geological survey grading commercial mineral deposits according to such factors as magnitude of the deposit and time of availability for and feasibility of extraction of a deposit;

(b) The potential for effective multiple sequential use which would result in the optimum benefit to the landowner, neighboring residents, and the community as a whole;

(c) The development or preservation of land to enhance development of physically attractive surroundings compatible with the surrounding area;

(d) The quality of life of the residents in and around areas which contain commercial mineral deposits;

(e) Other master plans of the county, city and county, city, or town;

(f) Maximization of extraction of commercial mineral deposits;

(g) The ability to reclaim an area pursuant to the provisions of article 32 of this title; and

(h) The ability to reclaim an area owned by any county, city and county, city, town, or other governmental authority or proposed, pursuant to an adopted plan, to be used for public purposes by such a governmental authority consistent with such proposed use.

(2) A planning commission shall cooperate with the planning commissions of contiguous areas and the mined land reclamation board created by section 34-32-105 in conducting the study and developing the master plan for extraction.

(3) (a) A county planning commission shall certify its master plan for extraction to the board of county commissioners or the governing body of the city or town where the county planning commission is acting in lieu of a city or town planning commission. A planning commission in any city and county, city, or town shall certify its master plan for extraction to the governing body of such city and county, city, or town.

(b) After receiving the certification of such master plan and before adoption of such plan, the board of county commissioners or governing body of a city and county, city, or town shall hold a public hearing thereon, and at least thirty days' notice of the time and place of such hearing shall be given by one publication in a newspaper of general circulation in the county, city and county, city, or town. Such notice shall state the place at which the text and maps so certified may be examined.

(4) The board of county commissioners or governing body of a city and county, city, or town may, after such public hearing, adopt the plan, revise the plan with the advice of the planning commission and adopt it, or return the plan to the planning commission for further study and rehearing before adoption, but, in any case, a master plan for extraction of commercial mineral deposits shall be adopted for the unincorporated territory and any city and county, city, or town in each populous county of the state on or before July 1, 1975.

Source: L. 73: p. 1047, § 1. C.R.S. 1963: § 92-36-4. L. 75: (1)(h) added, p. 1336, § 1, effective June 29. L. 77: (2) amended, p. 289, § 67, effective June 29.

Cross references: For establishment and functions of a county planning commission, see § 30-28-133.

ANNOTATION

Applied in *Hudspeth v. Bd. of County Comm'rs*, 667 P.2d 775 (Colo. App. 1983).

34-1-305. Preservation of commercial mineral deposits for extraction. (1) After July 1, 1973, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area known to contain a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(2) After adoption of a master plan for extraction for an area under its jurisdiction, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(3) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority which has control over zoning from zoning or rezoning land to permit a certain use, if said use does not permit erection of permanent structures upon, or otherwise permanently preclude the extraction of commercial mineral deposits by an extractor from, land subject to said use.

(4) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or other governmental authority which has control over zoning from zoning for agricultural use, only, land not otherwise zoned on July 1, 1973.

(5) Nothing in this section shall be construed to prohibit a use of zoned land permissible under the zoning governing such land on July 1, 1973.

(6) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority from acquiring property known to contain a commercial mineral deposit and using said property for a public purpose; except that such use shall not permit erection of permanent structures which would preclude permanently the extraction of commercial mineral deposits.

Source: **L. 73:** p. 1048, § 1. **C.R.S. 1963:** § 92-36-5. **L. 75:** (6) added, p. 1336, § 2, effective June 29.

ANNOTATION

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 *Den. L. J.* 1 (1974).

This section does not deprive landowners of reasonable use of their property, and thus does not constitute a governmental taking. *Cottonwood Farms v. Bd. of County Comm'rs*, 725 P.2d 57 (Colo. App. 1986), *aff'd*, 763 P.2d 551 (Colo. 1988).

Local governments can permit uses compatible with mining. By zoning, rezoning,

granting a variance, or other action or inaction, local governments can permit any use of land known to contain a commercial mineral deposit so long as the permitted use is not incompatible with mining, such as erecting permanent structures on this land; the preservation act does not require local governments to allow mining in any area where it is commercially practicable, but only to preserve access to the mineral deposits. *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

JOINT REVIEW PROCESS**ARTICLE 10****Colorado Joint Review Process****34-10-101 to 34-10-104. (Repealed)**

Editor's note: (1) This article was added in 1983. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 34-10-104 provided for the repeal of this article, effective July 1, 1996. (See L. 91, p. 689.)

MINES AND MINERALS**Health and Safety****ARTICLE 20****Mining - Legislative Declaration and Definitions**

Editor's note: This article was numbered as article 1 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

34-20-101.	Legislative declaration.		change of statutory refer-
34-20-102.	Definitions.		ences.
34-20-103.	Division of reclamation, min-	34-20-104.	Minerals, energy, and geology
	ing, and safety - creation -		policy advisory board - cre-
	powers and duties - transfer		ation.
	of functions and property -		

34-20-101. Legislative declaration. The general assembly hereby finds and declares that the extraction of mineral resources is a necessary and proper activity and that the achievement of safe and healthful conditions and practices in mines in this state can only be accomplished with the cooperation and coordination of the operators of such mines, the miners who work in the mines, and the state and federal government. The general assembly recognizes that the mining industry is vital to the economy of this state and that the state's mineral and energy resources are of commercial and strategic value to the entire country. The general assembly also recognizes that the efficient development of such resources provides jobs and generates revenues for state and local economies and that such development should be conducted in a manner which protects the health and safety of the miners and of the general public. The general assembly further finds and declares that all mines as defined under federal law are subject to federal regulation. It is the intent of the general assembly to recognize the existence of the federal mine safety laws and to provide a means whereby the state can assist, upon request, mine operators and miners in their attempts to comply with those laws. The general assembly also recognizes that nonproducing mines and mines that are open to the public are not regulated by the federal government. It is the intent of the general assembly to provide an inspection program for such mines to assist in protecting the health and safety of the general public touring such operations. The general assembly hereby recognizes that the "Federal Mine Safety and Health Act of 1977", as amended, Pub.L. 95-164, provides for the proper ventilation of mines and the construction

of escapement shafts. The general assembly declares that it is the intent of the general assembly that all mines in the state of Colorado that are subject to said federal law shall comply with said requirements for ventilation and escapement shafts.

Source: L. 88: Entire article R&RE, p. 1184, § 1, effective July 1. **L. 92:** Entire section amended, p. 1922, § 9, effective July 1.

Editor's note: This section is similar to former § 34-20-102 as it existed prior to 1988.

34-20-102. Definitions. As used in articles 20 to 25 of this title, unless the context otherwise requires:

- (1) "Approved" means confirmed by the commissioner of mines or his designee.
- (2) "Authorized representative" means a person employed by the division and authorized by the director to conduct safety and health studies, equipment surveys, tests, and technical assistance visits and to perform other duties assigned by the director.
- (3) "Board" means the coal mine board of examiners.
- (4) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person and used in, to be used in, or resulting from the work of extracting in such bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, including the work of preparing the coal so extracted, and such term includes custom coal preparation facilities.
- (5) "Commissioner" means the commissioner of mines.
- (6) "Department" means the department of natural resources.
- (7) "Director" means the director of the division of reclamation, mining, and safety in the department of natural resources.
- (8) "Division" means the division of reclamation, mining, and safety in the department of natural resources.
- (9) (a) "Mine" means:
 - (I) Any area of land from which minerals are extracted in nonliquid form or are extracted in a liquid form while workers are underground;
 - (II) Private ways and roads appurtenant to such area; and
 - (III) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailing ponds, on the surface or underground, used in, or to be used in, or resulting from the work of extracting such minerals from their natural deposits in nonliquid form or, if in liquid form, used by workers underground or used or to be used in the milling of such minerals or the work of preparing coal or other minerals.
- (b) "Mine" does not include the facilities defined in section 12-23-101 (3.5), C.R.S., nor does it include earthen dams, sand and gravel pits, clay pits, or rock and stone quarries, including surface limestone and dolomite quarries.
- (10) "Miner" means any individual working in a mine.
- (11) "Operator" means any owner, lessee, or other person who operates, controls, or supervises a mine or an independent contractor performing services or construction at such mine.
- (12) "Tourist mine" means a nonproducing mine not regulated by the federal government that is open to the general public for tours.
- (13) "Work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite and such other work of preparing such coal as is usually done by the operator of the coal mine.

Source: L. 88: Entire article R&RE, p. 1185, § 1, effective July 1. **L. 92:** (2), (7), and (8) amended, p. 1923, § 10, effective July 1. **L. 2006:** (2), (7), and (8) amended, p. 214, § 7, effective August 7.

Editor's note: This section is similar to former § 34-20-101 as it existed prior to 1988.

34-20-103. Division of reclamation, mining, and safety - creation - powers and duties - transfer of functions and property - change of statutory references. (1) There is hereby created the division of reclamation, mining, and safety in the department of natural resources. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint the director of the division of reclamation, mining, and safety, and the director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the division and the director. Appointing authority for such employees may be delegated by the director to the heads of the offices in the division as appropriate.

(2) The division shall consist of the office of active and inactive mines, created in article 21 of this title, the coal mine board of examiners, created in article 22 of this title, and the office of mined land reclamation and the mined land reclamation board, created in article 32 of this title.

(3) The division of reclamation, mining, and safety shall be responsible for the administration of articles 20 to 25, 32, and 33 of this title through the office of active and inactive mines and the office of mined land reclamation.

(4) to (6) (Deleted by amendment, L. 2006, p. 214, § 8, effective August 7, 2006.)

(7) The director of the division of reclamation, mining, and safety shall prepare and submit to the executive director of the department of natural resources a plan for encouraging the development of minerals in the state. Such plan shall be formulated based upon the annual report and recommendations of the Colorado geological survey, the minerals, energy, and geology policy advisory board, and the other divisions in the department.

(8) The director of the division of reclamation, mining, and safety shall:

(a) Conceive and develop long range and strategic plans and policies;

(b) Compile and disseminate information on Colorado's mineral opportunities, analyze and identify constraints which may affect development, resolve problems, and promote resource utilization;

(c) Work with other state economic development planners to help establish a consistent state minerals and energy development policy and long range plans for economic mineral development;

(d) Coordinate with federal agencies on proposed land uses, policies, legislation, and regulation;

(e) Provide or support Colorado government liaison with federal agencies and alert the department to developments or opportunities; and

(f) Consult with local governments, public interest groups, environmental groups, and constituency groups where necessary to promote a sound and balanced approach to minerals development.

(9) Repealed.

Source: L. 92: Entire section added, p. 1923, § 11, effective July 1. L. 96: (9)(a), (9)(c), and (9)(d) amended, p. 1219, § 14, effective August 7. L. 97: (2) to (5) amended, p. 1028, § 61, effective August 6. L. 2002: (7) and (9)(b)(II) amended, p. 878, § 6, effective August 7. L. 2003: (2) amended, p. 1962, § 7, effective May 22. L. 2005: (9) repealed, p. 1463, § 3, effective July 1. L. 2006: (1), (3), (4), (5), (6), (7), and IP(8) amended, p. 214, § 8, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsections (9)(a), (9)(c), and (9)(d), see section 1 of chapter 237, Session Laws of Colorado 1996.

34-20-104. Minerals, energy, and geology policy advisory board - creation.

(1) There is hereby created in the department of natural resources the minerals, energy, and geology policy advisory board. The advisory board shall consist of seventeen members appointed by the governor as follows: A board member of the mined land reclamation board; a board member of the oil and gas conservation commission; a member of the Colorado geological survey advisory committee; one member of the coal mine board of examiners; the executive director of the department of natural resources, or the designee of such executive director; four representatives of the oil and gas industry, at least one of

whom shall be a practicing professional geologist; four representatives of the mining industry, at least one of whom shall be a practicing professional geologist; and four members at large representing local government, the environmental community, and institutions of higher education, and a practicing professional geologist who shall be from the field of hydrogeology, engineering geology, or environmental geology. The method of selecting said industry representatives shall be accomplished in the following manner: The governor shall solicit qualified candidates from recognized trade associations and qualified individuals in the referenced industries. The governor shall appoint the industry representatives to serve on the board from each list so developed. The ex officio nonvoting members of the board shall include: The director of the division of reclamation, mining, and safety, the heads of the office of active and inactive mines, the office of mined land reclamation, the state geologist, and the director of the oil and gas conservation commission. The board shall elect its chair from the membership of the board on an annual basis, who shall not be an employee of the state of Colorado. To the extent practicable, at least five members of the advisory board shall be residents of Colorado west of the continental divide.

(2) Appointments shall be made no later than August 30, 1992.

(3) The advisory board shall:

(a) Explore and quantify administrative efficiencies and office locations of the division's programs and make recommendations concerning them to the executive director prior to June 30, 1993. In addition, the board shall examine and make recommendations to the executive director prior to June 30, 1993, concerning the functions and duties of the office of active and inactive mines, particularly with respect to those functions transferred from the division of mines.

(b) Develop and plan a mineral information management system, including the creation of a minerals and energy information center;

(c) Prepare and submit to the governor and the office of economic development an annual report on the minerals and energy industry in the state, with cooperation and information from divisions of the department of natural resources;

(d) Review the annual budget requests, programs, and related fees or levies for the division and the oil and gas conservation commission;

(e) Review periodically the public information plan and public relations outreach efforts for the mineral, energy, and geology programs within the department;

(f) Provide advice to the executive director and the boards, commissions, and advisory committees of the mineral, energy, and geology programs in the department on related policy issues affecting the state;

(g) Assist the Colorado geological survey and its advisory committee in addressing the funding needs and services provided by the survey;

(h) Develop a plan to promote the minerals, oil and gas, and geological resources of the state;

(i) Repealed.

(j) Provide advice to the executive director on programs or projects that should receive a grant of funds from the operational account of the severance tax trust fund as set forth in section 39-29-109.3 (1), C.R.S.

(4) Repealed.

Source: **L. 92:** Entire section added, p. 1923, § 11, effective July 1. **L. 96:** (3)(j) added, p. 999, § 2, effective May 23; (3)(i) repealed, p. 1218, § 13, effective August 7. **L. 98:** (4) repealed, p. 72, § 1, effective March 23. **L. 2002:** (3)(c) amended, p. 878, § 7, effective August 7. **L. 2006:** (1) amended, p. 216, § 9, effective August 7. **L. 2008:** (3)(j) amended, p. 1872, § 9, effective June 2.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (3)(i), see section 1 of chapter 237, Session Laws of Colorado 1996.

ARTICLE 21

Office of Active and Inactive Mines

Editor's note: This article was numbered as article 2 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

Cross references: For definitions applicable to this article, see § 34-20-102.

34-21-101.	Office of active and inactive mines - creation - duties.	34-21-106.	Officers not to reveal information - penalty.
34-21-102.	Commissioner of mines.	34-21-107.	Salaries of commissioner and division employees.
34-21-103.	Head of office of active and inactive mines - appointment - staff.	34-21-108.	Report of director.
34-21-104.	Rules and regulations.	34-21-109.	Code of signals.
34-21-105.	Conflicts of interest.	34-21-110.	Tourist mines.

34-21-101. Office of active and inactive mines - creation - duties. (1) There is hereby created in the division of reclamation, mining, and safety in the department of natural resources the office of active and inactive mines, the head of which shall be appointed by the director of the division. The office shall have the following duties:

(a) To assist, upon request, operators and miners in meeting the requirements of the "Federal Mine Safety and Health Act of 1977", Pub.L. 95-164, as amended;

(b) To assist, upon request, operators in establishing, training, equipping, and coordinating mine rescue teams;

(c) To maintain state miner training and accident reduction programs as deemed necessary by the commissioner and to provide such programs to operators and miners when requested;

(d) To secure funding for state and local training, technical assistance, and technology improvement programs;

(e) Through the board, to examine applicants for positions for which certification is required by federal law and to issue certificates of competence to those applicants who qualify;

(f) To provide for permitting of underground diesel-powered equipment and for permitting the storage and use of explosives until a federal permit is required by law;

(g) To be a repository for mine information and maps, to collect mine data and records, and to preserve information regarding the history and progress of the mining industry in the state from the earliest date to the present time;

(h) To respond to operators' or coroners' requests for assistance in investigating injuries and accidents;

(i) To provide administration and clerical support for the commissioners, the director, and the board;

(j) To prepare an annual report on the mining industry in Colorado providing information on production, employment, safety, ownership, processing and distribution, location, type, and any other information necessary to guide and promote mining in the state;

(k) To cooperate with and utilize the Colorado geological survey, consistent with its duties in sections 34-1-101 and 34-1-103;

Editor's note: This version of paragraph (k) is effective until January 31, 2013.

(k) To cooperate with and utilize the Colorado geological survey, consistent with its duties in sections 23-41-203 and 23-41-205, C.R.S.;

Editor's note: This version of paragraph (k) is effective January 31, 2013.

(l) To cooperate with other state agencies and institutions in the implementation of articles 1, 21, 22, 23, 24, 32, and 33 of this title;

(l.1) To develop and administer the abandoned mine reclamation program consistent with the provisions of section 34-33-133; and

(m) To perform such other duties as specified in articles 22 to 24 and article 32 of this title.

Source: **L. 88:** Entire article R&RE, p. 1186, § 2, effective July 1. **L. 92:** IP(1), (1)(e), and (1)(l) amended and (1)(l.1) added, p. 1931, § 12, effective July 1. **L. 93:** (1)(m) amended, p. 1198, § 17, effective July 1. **L. 2006:** IP(1) amended, p. 216, § 10, effective August 7. **L. 2012:** (1)(k) amended, (HB 12-1355), ch. 247, p. 1197, § 6, effective January 31, 2013.

Editor's note: This section is similar to former § 34-40-101 as it existed prior to 1988.

ANNOTATION

For appointment of board of mine examiners, see *People ex rel. Inspector of Coal Mines v. Denman*, 16 Colo. App. 337, 65 P. 455 (1901).

34-21-102. Commissioner of mines. (1) In accordance with the provisions of section 1 of article XVI of the Colorado constitution, it is the duty of the governor, with the consent of the senate, to appoint a person known to be competent to the office of commissioner, who may also be the executive director of the department of natural resources. The office of commissioner of mines shall be located in the office of the executive director of the department of natural resources. The governor has the power to remove said commissioner from office for incompetency, neglect of duty, or abuse of the privileges of such commissioner's office.

(2) (Deleted by amendment, L. 92, p. 1931, § 13, effective July 1, 1992.)

Source: **L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1931, § 13, effective July 1.

Editor's note: This section is similar to former § 34-40-103 as it existed prior to 1988.

34-21-103. Head of office of active and inactive mines - appointment - staff. (1) The director shall, subject to the provisions of section 13 of article XII of the state constitution, appoint the head of the office of active and inactive mines, subject to the supervision and control of the director. The head of the office of active and inactive mines shall have knowledge of mine health and safety practices, an understanding of mining technologies, and reclamation practices.

(2) The director may hire such competent persons, including authorized representatives, as the director deems necessary and proper for carrying out the purposes of articles 20 to 24, 32, and 33 of this title, and such persons shall comprise the office staff.

Source: **L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1931, § 14, effective July 1.

Editor's note: This section is similar to former § 34-40-103 as it existed prior to 1988.

34-21-104. Rules and regulations. The director may, subject to the supervision and control of the commissioner, promulgate rules and regulations which shall be in accordance with the provisions of article 4 of title 24, C.R.S., to carry out the provisions of articles 20 to 24 of this title and shall enforce the rules and regulations promulgated thereunder in the same manner as he enforces the provisions of such articles. In the promulgation of such rules and regulations, the director shall consult with representatives of operators and miners.

Source: **L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1.

Editor's note: This section is similar to former § 34-40-103 as it existed prior to 1988.

34-21-105. Conflicts of interest. The commissioner, director, division staff, and office staff shall devote their entire time and attention to the duties of their offices. Neither the

commissioner, the director, nor any member of the office staff, shall be an owner, operator, employee, controlling stockholder, or director of any producing mine, nor shall any such person act as manager, agent, or lessee for any mining corporation or act as an active member, officer, or employee of any labor union or organization representing miners during the term of such person's office.

Source: **L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 15, effective July 1.

Editor's note: This section is similar to former § 34-40-110 as it existed prior to 1988.

34-21-106. Officers not to reveal information - penalty. (1) Information obtained by the commissioner, director, and office staff, including authorized representatives, which pertains to mine and metallurgical processes, ore bodies, or deposits or to the location, course, or character of underground workings and which is stamped confidential shall remain confidential, except in the way of official reports filed for record in accordance with the requirements of articles 20 to 25 of this title, and no information shall be furnished with the intent to aid in or prevent the sale or other conveyance of any mine or mining property.

(2) Any person who violates the requirements of this section is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars. In addition, the person so convicted shall be removed from his position.

Source: **L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 16, effective July 1.

Editor's note: This section is similar to former § 34-40-114 as it existed prior to 1988.

34-21-107. Salaries of commissioner and division employees. The commissioner shall receive a salary as provided by law. Employees of the division shall receive for their services salaries to be paid as other officers and employees of the state are paid, pursuant to section 13 of article XII of the state constitution.

Source: **L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1.

Editor's note: This section is similar to former § 34-40-116 as it existed prior to 1988.

34-21-108. Report of director. (1) The director shall report to the executive director of the department of natural resources at such times and on such matters as the executive director requires.

(2) The director is authorized to make researches and studies as appropriations may be made therefor and as he deems necessary to the mining industry in the state, but the researches and studies shall not duplicate the work of other state and federal agencies.

(3) Materials prepared under the authority of this section or any other materials of the office of active and inactive mines of the state of Colorado circulated in quantity outside the department shall be issued subject to the approval and control of the executive director of the department of natural resources.

Source: **L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1. **L. 93:** (3) amended, p. 1791, § 83, effective June 6.

Editor's note: This section is similar to former § 34-40-111 as it existed prior to 1988.

34-21-109. Code of signals. There shall be established by the commissioner a uniform code of signals, embracing those most generally in use in metalliferous mines, which shall

be adopted in all mines using hoisting machinery. The code of signals shall be securely posted, in clear and legible form, in the engine room, at the collar of the shaft, and at each level or station. In all shafts equipped with cages, such shafts and cages shall be fully equipped with a system of electric signals from such cages and stations to the engineer wherever possible.

Source: L. 88: Entire article R&RE, p. 1188, § 2, effective July 1.

Editor's note: This section is similar to former § 34-47-109 as it existed prior to 1988.

34-21-110. Tourist mines. The office shall have the authority to inspect tourist mines in the state. In those cases where the public health and safety may be in danger, the office may close such mine until modification recommendations made by the office have been made. Where appropriate, such actions shall be made in consultation with the passenger tramway safety board.

Source: L. 88: Entire article R&RE, p. 1188, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 17, effective July 1.

ARTICLE 22

Coal Mine Board of Examiners

Editor's note: This article was numbered as article 3 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

Cross references: For definitions applicable to this article, see § 34-20-102.

34-22-101.	Scope of article.		
34-22-102.	Board of examiners - created	34-22-108.	Expiration of certificates.
	- duties - members.	34-22-109.	Examinations - content.
34-22-103.	Salaries and expenses of board.	34-22-110.	Examinations - notice - grading - filing.
34-22-104.	Board of examiners - meetings - examinations.	34-22-111.	Certification fee.
34-22-105.	Certificate of competency.	34-22-112.	Examinations - applicant qualifications.
34-22-106.	Reciprocity.	34-22-113.	Board of examiners - repeal - review of functions.
34-22-107.	Disciplinary action - procedure - grounds.		

34-22-101. Scope of article. The provisions of this article pertain only to coal mines.

Source: L. 88: Entire article R&RE, p. 1189, § 3, effective July 1.

34-22-102. Board of examiners - created - duties - members. (1) There is hereby created a coal mine board of examiners, which shall have the following duties:

(a) To establish criteria, including education and training, past and current work experience, and annual electrical retraining requirements, and to examine all applicants for positions in coal mines for which certification is required by federal law;

(b) To issue certificates of competency to those applicants who qualify therefor;

(c) To take disciplinary action against the holder of a certificate of competency for violation of any provision of this article, where such discipline is deemed proper based upon sufficient investigation and in accordance with this article. Disciplinary action may include, without limitation:

(I) Denying the issuance or renewal of, suspending for a specified period, or revoking a certificate;

(II) Issuing a letter of admonition to, or placing on probation, the holder of a certificate; or

(III) Imposing other conditions or limitations upon a certificate or the holder thereof.

(d) To provide assistance to the division in developing curricula for coal miner training programs;

(e) To establish criteria for granting state certification of belt examiners, cable splicers, lamp and gas attendants, and shot-firers;

(f) To issue cease-and-desist orders.

(1.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the holder of a certificate of competency that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the holder of a certificate of competency.

(2) The board shall be composed of four voting members and one nonvoting ex officio member as follows:

(a) One member shall be a coal miner of known experience and practice in underground coal mining residing in the state of Colorado and actively engaged in the coal mining industry during the term of his office;

(b) One member shall be a Colorado coal mine owner, operator, manager, or other mine official actively engaged in the surface coal mining industry during the term of his office;

(c) One member shall be a Colorado mine owner, operator, manager, or other mine official actively engaged in the underground coal mining industry during the term of his office;

(d) One member shall be an engineer experienced in coal mining; and

(e) The commissioner, or his designee, shall serve as a nonvoting, ex officio member of the board.

(3) The members of the board shall be appointed by the governor with the consent of the senate. The term of office for each member of the board shall be four years. Any vacancies on the board shall be filled by the governor by appointment for the remainder of an unexpired term. The governor may remove any board member for misconduct, incompetence, or neglect of duty.

(4) Members of the board who are serving their terms of office on July 1, 1988, shall complete their terms prior to the implementation of the provisions of this section.

Source: **L. 88:** Entire article R&RE, p. 1189, § 3, effective July 1. **L. 92:** (1)(a) amended, p. 1932, § 18, effective July 1. **L. 96:** (3) amended, p. 377, § 1, effective July 1. **L. 2006:** (1)(c) amended and (1)(f) and (1.5) added, pp. 281, 282, §§ 1, 2, effective March 31.

Editor's note: This section is similar to former § 34-21-101 as it existed prior to 1988.

ANNOTATION

Legislation safeguarding coal mining operations is within scope of police power of

state. *Dalrymple v. Sevcik*, 80 Colo. 297, 251 P. 134 (1926).

34-22-103. Salaries and expenses of board. The members of the board who are not state employees shall be compensated at a rate of fifty dollars per day for each day of actual service on the board and shall receive actual traveling and other expenses incurred by them in attendance at the meetings of the board and in the performance of their duties. The expenses in connection with the board shall be paid out of the general fund, or from any appropriation therefor, in accordance with the rules set forth by the state personnel board upon filing of the certificates of time and expenses of the board of examiners in the office of the controller, which certificates shall show the actual time in which each member of said

board is so engaged and shall be signed by the chairman of said board and accompanied by vouchers showing the said expenses and shall be approved by the director.

Source: L. 88: Entire article R&RE, p. 1190, § 3, effective July 1.

Editor's note: This section is similar to former § 34-21-103 as it existed prior to 1988.

34-22-104. Board of examiners - meetings - examinations. (1) The board shall, by majority vote of all members, elect its chairman from among its members. The executive director of the department of natural resources, or a designee of the executive director, shall serve as administrator to the board. The office of active and inactive mines shall provide such assistance as may be necessary to the board in the performance of its duties. The board of examiners shall meet every year or more frequently, if necessary, at times and places designated by the chairman.

(2) Examinations for certifications shall be given at such times as determined by the board to applicants for certificates of competency and at places to be determined by the division. Determination of the date and location of an examination shall be announced at least thirty days preceding the examination.

Source: L. 88: Entire article R&RE, p. 1190, § 3, effective July 1. L. 92: (1) amended, p. 1933, § 19, effective July 1.

Editor's note: This section is similar to former § 34-21-105 as it existed prior to 1988.

34-22-105. Certificate of competency. (1) Certificates of competency shall be required as a condition of employment for any person working in or about any coal mine in this state in positions designated by federal law.

(2) Positions for which certification is required in underground coal mines include mine foreman, fire boss, mine electrician, shot-firer, and hoistman.

(3) Positions for which certification is required in surface coal mines include blaster and electrician.

(4) The board may designate such other position as may be required by federal law.

Source: L. 88: Entire article R&RE, p. 1190, § 3, effective July 1.

Editor's note: This section is similar to former § 34-21-109 as it existed prior to 1988.

34-22-106. Reciprocity. The board may recognize certification by another state if such certification requirements are substantially similar to the certification requirements of this article. The holder of certification recognized as equivalent may be employed in coal mines of this state for a period to be determined by the board upon presentation of an equivalent certification from another state. The board, following review of such equivalent certification, may certify the applicant for the same position.

Source: L. 88: Entire article R&RE, p. 1190, § 3, effective July 1.

Editor's note: This section is similar to former §§ 34-24-101 and 34-21-109 as they existed prior to 1988.

34-22-107. Disciplinary action - procedures - grounds. (1) In any case in which consideration is given to taking disciplinary action against the holder of a certificate of competency issued pursuant to this article, such proceedings shall be conducted in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S., and no certificate shall be revoked except according to the criteria stated in this article.

(2) A proceeding for the taking of disciplinary action against the holder of a certificate of competency may be commenced by the office of active and inactive mines upon its own motion for good cause shown or by the filing with the office of active and inactive mines of a written complaint, signed and attested to by the complainant, stating the name of the certificate holder against whom the complaint is made, the grounds on which the complaint is made, and a description of the facts and circumstances that gave rise to the complaint. The office of active and inactive mines shall have the authority to investigate any complaint to establish good cause prior to the initiation of disciplinary proceedings.

(3) No disciplinary action shall be lawful unless the office of active and inactive mines has first given the certificate holder notice, in writing, of the facts or conduct that may warrant such action, afforded the certificate holder an opportunity to submit written data, views, and arguments with respect to such facts or conduct and, except in cases of reckless actions or conduct that demonstrates a serious disregard for health and safety, given the certificate holder a reasonable opportunity to comply with all lawful requirements.

(4) (Deleted by amendment, L. 2006, p. 282, § 6, effective March 31, 2006.)

(5) The board shall hold a hearing within thirty days of the filing of written charges, and such hearing shall be held in accordance with the provisions of section 24-4-105, C.R.S.

(6) No certificate of competency shall be revoked except where the majority of the board finds, in writing, based on the evidence of a hearing record, that the holder of the certificate is guilty of:

- (a) Reckless disregard of applicable mining law; or
- (b) Reckless disregard for compliance with health and safety standards; or
- (c) Demonstrated incompetence in the mine which endangers life or property; or
- (d) Intentional withholding or altering of mine examination information or reports where life and property is endangered.

(7) A written decision by the board made pursuant to section 24-4-105, C.R.S., which includes findings of fact and conclusions of law, shall be delivered to the certificate holder within ten days after the conclusion of the hearing. The written decision will accompany a written notice of disciplinary action. Such notice shall be delivered to the certificate holder by certified mail, and the disciplinary action shall be effective upon receipt of the notice. A copy of a notice of suspension or revocation shall be mailed to any coal mine operator who employs the person whose certification has been suspended or revoked.

(8) Final board actions and orders appropriate for judicial review may be reviewed in the court of appeals pursuant to section 24-4-106 (11), C.R.S. Judicial proceedings to enforce an order or action of the board may be instituted in accordance with section 24-4-106 (11), C.R.S.

(9) The board shall decide on a case-by-case basis whether a person whose certificate has been revoked may subsequently be issued a certificate and the duration of the revocation period, and such decision shall be written in the notice of revocation.

Source: L. 88: Entire article R&RE, p. 1190, § 3, effective July 1. L. 92: (2) to (4) amended, p. 1933, § 20, effective July 1. L. 96: (3) and (6) amended, p. 377, § 2, effective July 1. L. 2006: (1), (2), (3), (4), and (7) amended, p. 282, § 6, effective March 31.

Editor's note: This section is similar to former § 34-21-117 as it existed prior to 1988.

34-22-108. Expiration of certificates. Any certificate of competency issued pursuant to the provisions of this article shall become null and void if the certificate holder fails to be actively employed in the coal mining industry for a period of five years. This section shall not apply to federal coal mine inspectors.

Source: L. 88: Entire article R&RE, p. 1192, § 3, effective July 1.

Editor's note: This section is similar to former § 34-21-118 as it existed prior to 1988.

34-22-109. Examinations - content. (1) Applicants shall pass such reasonable and practical examinations as may be prescribed by the board for certification. Examinations

shall be designed to demonstrate whether the applicant possesses sufficient practical and theoretical knowledge for competent performance of the position for which certification is sought and whether the applicant has knowledge of the state and federal mine health and safety laws.

(2) An applicant for certification as a mine foreman or fire boss in underground coal mines shall be sufficiently knowledgeable as to coal mining, mechanical equipment, the different systems of working and ventilating coal mines, the nature and properties of noxious, explosive, poisonous gases of mines, and the nature and properties of coal dust.

(3) An applicant for certification as a shot-firer shall be sufficiently knowledgeable as to explosives, breaking agents, and blasting accessories used in coal mines, the proper placement of drill holes made for the purpose of breaking or dislodging coal and rock, the flame safety lamp and its use in detecting inflammables and noxious gases, and the proper ventilation in the working places of coal mines.

Source: L. 88: Entire article R&RE, p. 1192, § 3, effective July 1.

Editor's note: This section is similar to former § 34-21-110 as it existed prior to 1988.

34-22-110. Examinations - notice - grading - filing. (1) Notice of examination shall be given by legible notices for a period of six months prior to the examination. The date and location of the examination shall be announced at least thirty days preceding the examination, and the conditions of eligibility shall be fully stated on the notices. Notices shall be furnished by the office of active and inactive mines and posted in a conspicuous place at each coal mine by the operator of such mine.

(2) The office of active and inactive mines shall provide all candidates who take the examination with mathematical formulas to be used in the answering of questions given.

(3) The examination papers of all applicants who earn certificates of competency shall be kept, with the complete list of questions and their correct solutions, by the office of active and inactive mines for a period of two years.

(4) Application forms shall be provided by the office of active and inactive mines. Completed applications shall be returned at least fifteen days prior to the date of the examination.

Source: L. 88: Entire article R&RE, p. 1192, § 3, effective July 1. L. 92: Entire section amended, p. 1933, § 21, effective July 1.

Editor's note: This section is similar to former § 34-21-109 as it existed prior to 1988.

34-22-111. Certification fee. (1) Each individual taking an examination for certification as required in section 34-22-105 shall pay to the office of active and inactive mines a fee of twenty-five dollars for any initial examination or subsequent examinations required because of the failure to receive a passing grade. Renewals of certificates of competency where required shall be at no cost to the individual holding a valid certificate.

(2) Notwithstanding the amount specified for the fee in subsection (1) of this section, the executive director of the department of natural resources by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department of natural resources by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 88: Entire article R&RE, p. 1192, § 3, effective July 1. L. 92: Entire section amended, p. 1934, § 22, effective July 1. L. 98: Entire section amended, p. 1340, § 60, effective June 1.

Editor's note: This section is similar to former § 34-21-109 as it existed prior to 1988.

34-22-112. Examinations - applicant qualifications. (1) All candidates for examination for certification shall demonstrate at the time of the examination satisfactory eyesight and hearing consistent with the practice and needs of the coal mining industry.

(2) Every applicant for certification as a mine foreman or assistant mine foreman shall produce evidence satisfactory to the board of not less than three years' experience in mines or in operations determined by the board to be equivalent to coal mines. The experience of an applicant intending to work in underground mines must be in underground mining. The experience of an applicant intending to work in surface mining must be in surface mining.

(3) The holder of a college degree in engineering, which degree is determined by the board to be acceptable and suited to the intent and purpose of this article, who satisfies the board that he has at least one year of actual and satisfactory experience in the operation of underground coal mines, including experience in mining, timbering, haulage, drainage, and ventilation and including experience in the capacity of mining engineer, shall be eligible for examination as mine foreman or assistant mine foreman in underground coal mines.

(4) Every applicant for a fire boss certification shall provide evidence satisfactory to the board that he has at least three years' experience in gassy underground mines, one year of which will be in an underground coal mine.

(5) (a) Every applicant for a certificate of competency as a mine electrician shall have at least one year's experience in coal mines or noncoal mines or other electrical experience and:

(I) Shall have been qualified as a coal mine electrician by another state that has a coal mine electrical qualification program equivalent to that of this state or a state program approved by the United States secretary of labor or his authorized representative; or

(II) Shall be determined to be a person qualified to perform electrical work in underground or surface coal mines by the United States secretary of labor or his authorized representative; or

(III) Shall be qualified by training, education, and experience to perform electrical work, maintain electrical equipment, and conduct examinations and tests of electrical equipment.

(b) In the case of an applicant for a certificate of competency as an underground coal mine electrician, the requisite one year's experience shall be in underground mines.

(c) All certified coal mine electricians shall attend annually an approved electrical retraining class to retain said certification.

(6) Every applicant for certification as a shot-firer must have experience as defined by the board.

(7) All hoistmen working in coal mines must be certified as follows:

(a) Applicants must have experience and training as approved by the board or the United States mine safety and health administration.

(b) (Deleted by amendment, L. 96, p. 378, § 3, effective July 1, 1996.)

Source: L. 88: Entire article R&RE, p. 1193, § 3, effective July 1. L. 96: (6) and (7) amended, p. 378, § 3, effective July 1.

Editor's note: This section is similar to former §§ 34-21-109 and 34-21-114 as they existed prior to 1988.

34-22-113. Board of examiners - repeal - review of functions. Unless continued by the general assembly, this article is repealed, effective July 1, 2020, and the coal mine board of examiners is abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the board specified in this article.

Source: L. 88: Entire article R&RE, p. 1194, § 3, effective July 1. L. 95: Entire section amended, p. 93, § 4, effective March 30. L. 96: Entire section amended, p. 378, § 3, effective July 1. L. 2006: Entire section amended, p. 282, § 3, effective March 31.

ARTICLE 23

Training and Retraining Programs

Editor's note: This article was numbered as article 11 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

Cross references: For definitions applicable to this article, see § 34-20-102.

34-23-101.	Training and retraining.	34-23-105.	Conflict with "Colorado
34-23-102.	Technical assistance.		Mined Land Reclamation
34-23-103.	Mine rescue teams.		Act" and "Colorado Surface
34-23-104.	Grant authorization.		Coal Mining Reclamation
			Act".

34-23-101. Training and retraining. (1) The office of active and inactive mines may establish miner training and retraining programs and make such programs available to those operators and miners who request the assistance of the office of active and inactive mines in meeting the miner training and retraining requirements of the federal law.

(2) Such programs shall be available throughout the state of Colorado and shall be offered at sites which are accessible by operators and miners.

(3) The office of active and inactive mines may request the advice and assistance of the board in developing training and retraining programs for coal mines with respect to coal mine certification requirements.

Source: L. 88: Entire article R&RE, p. 1194, § 4, effective July 1. L. 92: Entire section amended, p. 1934, § 23, effective July 1.

Editor's note: This section is similar to former § 34-40-122 as it existed prior to 1988.

34-23-102. Technical assistance. The office of active and inactive mines shall advise and assist operators in this state as may be necessary for mine safety on request of the operator. Such assistance shall include compliance with the federal law.

Source: L. 88: Entire article R&RE, p. 1194, § 4, effective July 1. L. 92: Entire section amended, p. 1934, § 24, effective July 1.

Editor's note: This section is similar to former § 34-40-122 as it existed prior to 1988.

34-23-103. Mine rescue teams. (1) The office of active and inactive mines shall assist operators in complying with the mine rescue team requirements of the "Federal Mine Safety and Health Act of 1977", Pub.L. 95-164, as amended. Such assistance may include, but need not be limited to:

- (a) The establishing, equipping, and, where funds are available, training and maintaining of mine rescue teams;
- (b) The acquisition of funds for sustaining mine rescue centers;
- (c) Any assistance with rescue costs, where funds are available, at abandoned mines;
- (d) Making application for funds in cooperation with the division of emergency management to pay rescue costs; and
- (e) Technical assistance and training in mining rescue procedures for local officials.

Source: **L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** IP(1), (1)(c), and (1)(d) amended and (1)(e) added, p. 1935, § 25, effective July 1. **L. 2004:** (1)(d) amended, p. 1183, § 19, effective August 4.

Editor's note: This section is similar to former § 34-40-122 as it existed prior to 1988.

34-23-104. Grant authorization. The office of active and inactive mines may apply for and accept federal, state, or private grants to further the purposes and objectives of this article.

Source: **L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** Entire section amended, p. 1935, § 26, effective July 1.

34-23-105. Conflict with "Colorado Mined Land Reclamation Act" and "Colorado Surface Coal Mining Reclamation Act". Nothing in this article shall apply to any mining operation regarding reclamation of mined land which is regulated by the mined land reclamation board or division pursuant to article 32 or 33 of this title.

Source: **L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1.

Editor's note: This section is similar to former § 34-40-121 as it existed prior to 1988.

ARTICLE 24

Duties and Responsibilities of Operator

Editor's note: This article was numbered as article 4 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

Cross references: For definitions applicable to this article, see § 34-20-102.

34-24-101.	Annual report.		duty.
34-24-102.	Coal or other mine maps.	34-24-108.	Scales - weights certified.
34-24-103.	Explosives and diesel permits - fees - active and inactive mines operation - fund.	34-24-109.	Barrier pillar at property line.
34-24-104.	Employees - age.	34-24-110.	Abandoned mine to be covered - penalty.
34-24-105.	Opening or abandonment of mine - maps.	34-24-111.	Penalty for removing covering or fencing.
34-24-106.	Old workings.	34-24-112.	When visitors allowed underground.
34-24-107.	Danger signals - operator's		

34-24-101. Annual report. On or before January 31 of each year, every owner or operator shall make a report covering the twelve months preceding the previous January 1. Such report shall contain the name and address of the operator, the location of the mine, the capacity of the mine, the mineral resource being produced, the total tons mined, the mining methods employed, the number of employees, the safety statistics, the location of the processing facility, and the percentage distribution of the mine product in-state and out-of-state.

Source: **L. 88:** Entire article R&RE, p. 1195, § 5, effective July 1.

Editor's note: This section is similar to former § 34-29-134 as it existed prior to 1988.

ANNOTATION

Object and purpose of coal mining statutes are to secure health and safety of persons engaged in underground coal min-

ing. *Dalrymple v. Sevcik*, 80 Colo. 297, 251 P. 134 (1926).

34-24-102. Coal or other mine maps. (1) Every operator shall make a map of the surface of the property and a map of the underground workings. Such map shall be updated and submitted annually to the division.

(2) Each map shall be retained by the division in its permanent records. Such records shall be available for inspection, on request, by the public. Maps filed with the division prior to July 1, 1980, shall be made available to the public if the property is abandoned, and such maps shall be made available to the public with permission of the operator if the map depicts a mine which is still in production.

(3) Whenever surface features of a mine property can be shown upon such map without obscuring its details or impairing its usefulness, a separate map need not be made.

(4) Each map shall be made on a scale of not less than one hundred feet nor more than five hundred feet to the inch unless a different scale is approved by the office of active and inactive mines, and such map shall bear the name or number of the mine, its location as to county, township, and section, the name of the company or operator, the north point, the scale to which the map is drawn and an explanatory legend, and the certificate of the engineer or surveyor as to the accuracy of the map.

(5) The underground map shall be made on the same scale as the surface map unless a different scale is approved by the office of active and inactive mines and shall show the mine openings or excavations; the shafts, slopes, and drifts of the mine, the connections with other mines or workings, or any other seams in the same mine; the entries, rooms, pillars, and abandoned workings of the mine; and the barrier pillars between adjoining properties. Each map shall show the elevation of the mine haulageways and cross entries every five hundred feet.

Source: **L. 88:** Entire article R&RE, p. 1195, § 5, effective July 1. **L. 92:** Entire section amended, p. 1935, § 27, effective July 1.

Editor's note: This section is similar to former §§ 34-30-102 through 34-30-106 as they existed prior to 1988.

34-24-103. Explosives and diesel permits - fees - active and inactive mines operation - fund. (1) To protect the public health and safety from the improper storage, transportation, and use of explosives at mine sites, the office of active and inactive mines is authorized to enter into agreements with the United States bureau of alcohol, tobacco, firearms, and explosives and other authorized federal agencies, consistent with their statutory authorities, to provide explosives inspection and other explosives assistance to such federal agencies regarding mine site explosives storage, transportation, and use.

(2) and (3) (Deleted by amendment, L. 2003, p. 2490, § 2, effective June 5, 2003.)

(4) No diesel-powered machinery or equipment shall be used in any underground mine until it has been approved by the United States mine safety and health administration and approved or permitted by the office of active and inactive mines. The office of active and inactive mines has the authority to conduct any investigations which may be necessary to grant or renew such permits.

(5) (a) The fee for the issuance of each diesel permit relating to mining operations shall be a fee specified in paragraph (b) of this subsection (5). Moneys received from such fees shall be credited to the office of active and inactive mines operation fund, which fund is hereby created. All moneys credited to said fund, and all interest earned on such moneys, are subject to appropriation by the general assembly for paying the expenses of the office of active and inactive mines, and said moneys shall remain in such fund for such purposes and shall not revert to the general fund.

(b) The fee specified in paragraph (a) of this subsection (5) shall be in accordance with the following table:

Employees	Permit Fee
1-5	\$10.00
6-25	\$30.00
26-50	\$50.00
51-75	\$70.00
76 or more	\$90.00

(5.5) (Deleted by amendment, L. 2003, p. 2490, § 2, effective June 5, 2003.)

(6) If, following a hearing held in accordance with the provisions of article 4 of title 24, C.R.S., the head of the office of active and inactive mines finds that the applicant for a permit under this section or the holder of a permit issued under this section has committed any violation of this article relating to the use of diesel equipment in mining operations, the head of the office of active and inactive mines may refuse to issue, revoke, or suspend such permit.

(7) A permit issued pursuant to this section may be withheld or suspended if the permittee fails to pay any permit fees.

Source: L. 88: Entire article R&RE, p. 1195, § 5, effective July 1. L. 92: (1), (4), (5)(a), and (6) amended, p. 1936, § 28, effective July 1. L. 2000: (1) and (5)(a) amended and (5.5) added, p. 166, § 7, effective March 17. L. 2003: (1), (2), (3), (5.5), and (6) amended, p. 2490, § 2, effective June 5.

Editor's note: This section is similar to former §§ 34-27-101 and 34-47-131 as they existed prior to 1988.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (1), (2), (3), (5.5), and (6), see section 1 of chapter 377, Session Laws of Colorado 2003.

34-24-104. Employees - age. No person under eighteen years of age shall be employed in or about a mine except in office, janitorial, or food service capacities or other nonextraction, preparation, or production activities on the surface of such mine.

Source: L. 88: Entire article R&RE, p. 1196, § 5, effective July 1.

34-24-105. Opening or abandonment of mine - maps. (1) It is the duty of the operator of every mine to notify the director prior to the opening of any mine or the abandonment of any mine.

(2) Before a mine is abandoned or closed, the owner shall make a complete survey of all workings not represented on the maps and plans of such mine, and he shall enter the results on the maps to show the most advanced workings in the mine in relation to the boundary of the property. The owner shall file a copy of the updated map with the division.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1.

Editor's note: This section is similar to former §§ 34-29-129 and 34-30-107 as they existed prior to 1988.

34-24-106. Old workings. (1) The entrance to inactive or abandoned workings shall be posted to warn unauthorized persons against entering the territory.

(2) Abandoned workings shall be sealed or ventilated.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1.

Editor's note: This section is similar to former § 34-25-108 as it existed prior to 1988.

34-24-107. Danger signals - operator's duty. When operations are temporarily suspended in a mine, the operator shall see that danger signals are placed across the mine entrances, which signals shall be a warning for persons not to enter said mine. If the circulation of air through the mine is stopped, each entrance to said mine shall be closed off in such a manner as will ordinarily prevent persons from entering said mine, and a danger signal shall be displayed upon each entrance until such time as the ventilation is restored and the mine has been examined by a properly authorized representative. The mine foreman shall see that all danger signals used in said mine are in good condition.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1.

Editor's note: This section is similar to former § 34-26-102 as it existed prior to 1988.

34-24-108. Scales - weights certified. (1) It is required that every corporation, company, or person engaged in the business of mining and selling by weight, and where workmen are paid on a tonnage basis, to produce and constantly keep on hand, at the proper place, the necessary scales and whatever else may be necessary to correctly weigh the coal or other minerals mined and taken out by the workmen or miners of such corporation, company, or person. It is the duty of the inspector of weights and measures of each county in which the coal or other minerals are mined and sold to visit each mine operated therein once each year, unless oftener requested by the operator or the miners, to test the correctness of the scale. If in any county there is no inspector of weights and measures, then the district inspector of the district in which the mine is located shall be required to test the correctness of such scales within a reasonable time after application is made by either the operator or the miners.

(2) All weights necessary for testing and adjusting scales shall be duly certified and provided by the operator.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1.

34-24-109. Barrier pillar at property line. In all underground workings approaching property lines, a barrier pillar shall be left at least fifty feet on each side of the property line; but said barrier pillars may be removed upon mutual agreement of the operators in writing.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1.

Editor's note: This section is similar to former § 34-29-128 as it existed prior to 1988.

34-24-110. Abandoned mine to be covered - penalty. (1) Every abandoned or inactive mine endangering the life of man or beast shall be securely covered or fenced. It is the duty of the operator of such mine, upon the abandonment or cessation of operations therein or thereon, to securely cover or fence the same and post a "No Trespassing" sign bearing the name and address of the owner or operator. Anyone failing to securely cover or fence such mine or any person removing such fence or covering without permission of the operator, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed three hundred dollars. Such fine when assessed and paid shall be distributed as follows: Seventy-five percent to the office of active and inactive mines to be used to cover or fence mines which are dangerous to man or beast; twenty-five percent to the general fund of the state.

(2) In the case of any abandoned mine or any inactive mine where the owner or operator is unknown or cannot be found, the office of active and inactive mines has the right to erect a sign across or near the entrance of any such mine prohibiting the trespassing by any person, except as provided in section 34-24-112, into the mine and warning any trespasser that any such trespasser will be prosecuted and subject to the penalty provided for in subsection (3) of this section.

(3) It is unlawful for any person to trespass into any mine. Any person so trespassing is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.

(4) This provision shall not conflict with the requirements placed on those mines regulated by the mined land reclamation board or office of mined land reclamation pursuant to the provisions of articles 32 and 33 of this title.

Source: L. 88: Entire article R&RE, p. 1197, § 5, effective July 1. L. 92: Entire section amended, p. 1936, § 29, effective July 1.

Editor's note: This section is similar to former § 34-47-121 as it existed prior to 1988.

34-24-111. Penalty for removing covering or fencing. Any person removing or destroying any covering or fencing placed around or over any mine as provided for in section 34-24-110, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 88: Entire article R&RE, p. 1198, § 5, effective July 1.

Editor's note: This section is similar to former § 34-47-122 as it existed prior to 1988.

34-24-112. When visitors allowed underground. (1) It is unlawful for any person to enter any active or inactive mine unless accompanied by, or with prior written permission from, the operator of said mine.

(2) Persons desiring entry into abandoned mines, where the operator cannot be found, shall first secure written authorization from the office of the commissioner or the office of active and inactive mines.

(3) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.

(4) Each violation of this section shall be a separate offense.

Source: L. 88: Entire article R&RE, p. 1198, § 5, effective July 1. L. 92: (2) amended, p. 1937, § 30, effective July 1.

Editor's note: This section is similar to former § 34-47-125 as it existed prior to 1988.

ARTICLE 25

Jurisdiction of the Courts

Editor's note: This article was numbered as article 5 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

Cross references: For definitions applicable to this article, see § 34-20-102.

34-25-101. Jurisdiction of the courts. County courts in their respective counties have original jurisdiction in prosecution for the violation of section 34-24-103 (1), (2), or (3). In all trials in the county courts, the defendants shall be entitled to a trial by jury as in other misdemeanor cases. District courts in their respective districts have original jurisdiction upon information or indictment in all prosecutions for violations of this title.

Source: L. 88: Entire article R&RE, p. 1198, § 6, effective July 1.

Editor's note: This section is similar to former §§ 34-40-119 and 34-47-130 as they existed prior to 1988.

ARTICLE 26

Roof Control

34-26-101 to 34-26-122. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor's note: This article was numbered as article 6 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 27

Explosives - Coal Mines

34-27-101 to 34-27-108. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor's note: This article was numbered as article 8 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 28

Electricity

34-28-101 to 34-28-111. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor's note: This article was numbered as article 9 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 29

Safety Regulations

34-29-101 to 34-29-136. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor’s note: This article was numbered as article 10 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For present provisions relating to health and safety, see articles 20 to 25 and 31 of this title.

ARTICLE 30

Maps

34-30-101 to 34-30-108. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor’s note: This article was numbered as article 7 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For present provisions relating to coal or other mine maps, see § 34-24-102.

ARTICLE 31

Tunnels - Rights-of-way

34-31-101.	Tunnels - rights-of-way - con-	34-31-102.	Accounting.
	demnation.	34-31-103.	Surveys.

34-31-101. Tunnels - rights-of-way - condemnation. (1) The owner or his agent of any coal lands lying on two or more sides of the property of another shall have the right to enter and cross such adjoining or intermediate claims or property with such drifts, tunnels, and crosscuts as may be necessary for the practical or economical mining and development of his own property and for the purpose of extracting and removing coal therefrom. Such drifts, tunnels, crosscuts, and entries for the mining and development of coal shall not exceed six hundred sixty feet in length and shall not enter or cross any adjoining or intermediate claims or property which are operated at the time of entry or may reasonably be expected to be operated in the future either as a coal mine or as a part of an operating coal mine.

(2) Neither shall such drifts, tunnels, crosscuts, or entries for coal mining enter a seam of coal which it may reasonably be expected will be operated or mined in the future. Any such drifts, tunnels, crosscuts, or entries driven for the development of coal lands or which cross coal lands must conform to all pertinent laws relating to coal mines, and in no event shall such tunnels, drifts, crosscuts, or entries for coal mining be driven or maintained across any intermediate property if they interfere with the operation of said intermediate claim or property, nor if such drifts, tunnels, crosscuts, or entries for coal mining will interfere with the ventilation of any operations then or thereafter to be conducted in said intermediate property, nor if said drifts, tunnels, crosscuts, or entries for coal mining will damage the surface of said intermediate property or any seams of coal lying above said drifts, tunnels, crosscuts, or entries. In the construction of such drifts, tunnels, crosscuts, or entries for coal mining, no barrier pillars may be removed or destroyed without the consent of the owners of such barrier pillars.

(3) In the event such drifts, tunnels, crosscuts, or entries pertain to the development of coal lands or cross intermediate coal lands, they shall be subject to all pertinent laws and regulations relating to coal mines. When any such owner and the owners of such adjoining property through which such owner desires to pass under the terms of this article shall be unable to agree upon the terms and conditions and purchase price of rights-of-way for such necessary drifts, tunnels, and crosscuts, then the owner seeking to exercise the rights

granted in this section may exercise the rights of eminent domain and condemn a right-of-way into, across, and through such intermediate or adjacent lands such as may be necessary for the practical and economical working of his own property, and such rights-of-way shall be deemed and are hereby declared to be private ways of necessity.

(4) The value of the property taken in condemnation proceedings shall include, among other things, the value in place of the coal which will be mined or removed in the construction of any drift, tunnel, crosscut, or entry, and also the value of any coal which the owners thereof have a right to mine or remove and which by reason of the construction and operation of such drifts, tunnels, crosscuts, or entries cannot be removed with due regard to the safety or convenience of the operations of such mine or part of such mine. Customary charges for use through said private way of necessity for haulage purposes shall be assessed on each ton of coal received through said private way of necessity.

Source: L. 27: p. 483, § 1. CSA: C. 110, § 190. L. 43: p. 432, § 1. CRS 53: § 92-12-1. C.R.S. 1963: § 92-12-1.

Cross references: For proceedings in eminent domain under this section, see articles 1 to 7 of title 38.

34-31-102. Accounting. Any owner exercising the rights and privileges granted in this article shall do so in such manner as not to interfere with the mining operations of the owner into or through whose property he seeks to go, and shall extract only such ore as is necessary in the reasonable exercise of the rights granted by this article, and all ore extracted shall be accounted for by the person exercising such rights to the owner of the property from which such ore is taken, at its gross value on the surface.

Source: L. 27: p. 474, § 2. CSA: C. 110, § 191. CRS 53: § 92-12-2. C.R.S. 1963: § 92-12-2.

34-31-103. Surveys. The owner of such land through which it is proposed to construct such tunnel shall have the right at any reasonable time and from time to time, upon application to the superintendent or other managing officer of such condemning owner, to enter his works with their surveyors and inspectors for the purpose of inspection and making a survey of any such works and shall have the right of ingress and egress through said works at all reasonable times.

Source: L. 27: p. 484, § 3. CSA: C. 110, § 192. CRS 53: § 92-12-3. C.R.S. 1963: § 92-12-3.

Mined Land Reclamation

ARTICLE 32

Colorado Mined Land Reclamation Act

Editor's note: This article was numbered as article 13 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1976, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

34-32-101.	Short title.	34-32-105.	Office of mined land reclamation - mined land reclamation board - created.
34-32-102.	Legislative declaration.		
34-32-103.	Definitions.		
34-32-104.	Administration.	34-32-106.	Duties of board.

34-32-107.	Powers of board.	34-32-118.	Forfeiture of financial warranties.
34-32-108.	Rules and regulations.	34-32-119.	Operators - succession.
34-32-109.	Necessity of reclamation permit - application to existing permits.	34-32-120.	Permit refused defaulting operator.
34-32-110.	Limited impact operations - expedited process.	34-32-121.	Entry upon lands for inspection.
34-32-111.	Special permits - ten-day processing. (Repealed)	34-32-121.5.	Reporting certain conditions.
34-32-112.	Application for reclamation permit - changes in permits - fees - notice.	34-32-122.	Fees, civil penalties, and forfeitures - deposit - emergency response cash fund - created.
34-32-112.5.	Designated mining operation - rules.	34-32-123.	Operating without a permit - penalty.
34-32-113.	Prospecting notice - reclamation requirements - rules.	34-32-124.	Failure to comply with conditions of order, permit, or regulation.
34-32-114.	Protests and petitions for hearing.	34-32-124.5.	Emergencies endangering public health or environment.
34-32-115.	Action by board - appeals.	34-32-125.	Conflict with "Colorado Surface Coal Mining Reclamation Act".
34-32-116.	Duties of operators - reclamation plans.	34-32-126.	Fees - mined land reclamation cash fund. (Repealed)
34-32-116.5.	Environmental protection plan - designated mining operation - rules.	34-32-127.	Mined land reclamation fund - created - fees - fee adjustments - rules.
34-32-117.	Warranties of performance - warranties of financial responsibility - release of warranties - applicability.		

34-32-101. Short title. This article shall be known and may be cited as the "Colorado Mined Land Reclamation Act".

Source: L. 76: Entire article R&RE, p. 724, § 1, effective July 1.

Editor's note: This section is similar to former § 34-32-101 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L. J. 1 (1974). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?" see 51 U. Colo. L. Rev. 551 (1980). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980). For article, "Ensuring Long-Term

Protection of Water Quality at Colorado Mine Sites", see 30 Colo. Law. 83 (June 2001).

Mined Land Reclamation Act does not provide notice to all mine operators that mining could cause environmental damage; rather, the act proclaims that mining is a necessary and proper activity and should be promoted by the state of Colorado. *Hecla Min. Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083 (Colo. 1991).

34-32-102. Legislative declaration. (1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites,

and to protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that it is the intent of this article to require the development of a mined land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The mined land reclamation board or the office, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the mined land reclamation board or the office. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

(3) The general assembly further finds, determines, and declares that:

(a) It is the policy of this state to recognize that mining operations are conducted by government and private entities;

(b) All people of the state benefit from the reclamation of mined land;

(c) The funding to ensure that reclamation is achieved should be borne equitably by both the public and private sectors;

(d) The funding for enforcement and other activity that is conducted for the benefit of the general public should be supported by the general fund;

(e) It is the policy of this state to allocate resources adequate to accomplish the purposes of this article.

Source: **L. 76:** Entire article R&RE, p. 724, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 1200, § 1, effective July 1. **L. 91:** Entire section amended, p. 1431, § 2, effective July 1. **L. 92:** (2) amended, p. 1937, § 31, effective July 1. **L. 93:** (3)(e) added, p. 1175, § 1, effective July 1.

Editor's note: This section is similar to former § 34-32-102 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "State Law as a Limit on Local Regulation of the Mineral Industry", see 15 Colo. Law. 1657 (1986).

Mined land reclamation act was not intended to exempt mining and reclamation activities from the statutes governing the appropriation and administration of water. *Three Bells Ranch v. Cache La Poudre*, 758 P.2d 164 (Colo. 1988).

Limited preemption of local authority. The reclamation act preempts only the authority of a local government to set performance standards for mined land reclamation activities; it does not prohibit local regulation by permit of all aspects of land use for mining, including the location of

mining operations and related reclamation activities and other environmental and socioeconomic impacts. *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

Absent a contrary showing, the Colorado Mined Land Reclamation Act provides constructive notice to all mine operators that their activities could cause environmental damage. Defendant knew or should have known of a substantial probability that its mining operations would result in environmental damage. *New Hampshire Insurance Co. v. Hecla Mining Co.*, 791 P.2d 1154 (Colo. App. 1989).

34-32-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acid or toxic producing materials" means natural or reworked earth materials having acid or toxic chemical and physical characteristics.

(1.5) "Affected land" means the surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of such operation. Affected lands include but shall not be limited to private ways, roads, except those roads excluded pursuant to this subsection (1.5), and railroad lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise included

as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation or off-site groundwater monitoring wells.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Department" means the department of natural resources or such department, commission, or agency as may lawfully succeed to the powers and duties of such department.

(3.5) (a) "Designated mining operation" means a mining operation at which:

(I) Toxic or acidic chemicals used in extractive metallurgical processing are present on site;

(II) Acid- or toxic-forming materials will be exposed or disturbed as a result of mining operations; or

(III) Uranium is developed or extracted, either by in situ leach mining or by conventional underground or open mining techniques. A uranium mining operation may seek an exemption from designated mining operation status in accordance with section 34-32-112.5 (2).

(b) The various types of designated mining operations are identified in section 34-32-112.5. Except as provided in subparagraph (III) of paragraph (a) of this subsection (3.5), such mining operations exclude operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and that will not cause acid mine drainage.

(4) "Development" means the work performed in relation to a deposit, following the prospecting required to prove minerals are in existence in commercial quantities but prior to production activities, aimed at, but not limited to, preparing the site for mining, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(4.5) "Director" means the director of the division of reclamation, mining, and safety or such officer as may lawfully succeed to the powers and duties of such director.

(4.7) "Division" means the division of reclamation, mining, and safety or such agency as may lawfully succeed to the powers and duties of such division.

(4.9) "Environmental protection plan" means a plan submitted by a designated mining operation for approval as part of the operator's or applicant's permit for such operation pursuant to rules promulgated by the board for protection of human health or property or the environment in conformance with the duties of operators as prescribed by this article.

(5) "Executive director" means the executive director of the department of natural resources or such officer as may lawfully succeed to the powers and duties of such executive director.

(5.5) "Financial warranty" means a warranty of the type described in section 34-32-117 (3) and (4).

(5.7) "In situ leach mining" means in situ mining for uranium through the in-place dissolution of mineral components of an ore deposit by causing a chemical leaching solution, usually aqueous, to penetrate or to be pumped down wells through the ore body and then removing the mineral-containing solution for development or extraction of the mineral values.

(5.8) "In situ mining" means the in-place development or extraction of a mineral by means other than open mining or underground mining.

(6) (a) "Life of the mine" means that a permit granted pursuant to section 34-32-110 or 34-32-115 may continue in effect as long as:

(I) An operator continues to engage in the extraction of minerals and complies with the provisions of this article;

(II) Mineral reserves are shown by the operator to remain in the mining operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if he files a notice thereof with the board stating the reasons for nonproduction, a plan for the resumption thereof, and the measures taken to comply with reclamation and other

necessary activities as established by the board to maintain the mine in a nonproducing state. The requirement of a notice of temporary cessation shall not apply to operators who resume operating within one year and have included, in their permit applications, a statement that the affected lands are to be used for less than one hundred eighty days per year.

(III) Production is resumed within five years of the date production ended, or the operator files a report requesting an extension of the period of temporary cessation of production with the board stating the reasons for the continuation of nonproduction and those factors necessary to, and his plans for, resumption of production. In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.

(IV) The board does not take action to declare termination of the life of the mine, which action shall require a sixty-day notice to the operator alleging a violation of, or that inadequate reasons are provided in an operator's report under subparagraph (I), (II), or (III) of this paragraph (a). In such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present the full case and further provide reasonable time for the operator to bring violations into compliance.

(b) "Life of the mine" includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the board and this article, until such time as the board releases, in writing, the operator from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

(7) "Mineral" means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purposes of this article, this definition does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.

(8) "Mining operation" means the development or extraction of a mineral from its natural occurrences on affected land. The term "mining operation" includes, but is not limited to, open mining, in situ mining, in situ leach mining, surface operations, and the disposal of refuse from underground mining, in situ mining, and in situ leach mining. The term "mining operation" also includes the following operations on affected lands: Transportation; concentrating; milling; evaporation; and other processing. The term "mining operation" does not include: The exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; or the extraction of construction material where there is no development or extraction of any mineral.

(8.5) "Office" means the office of mined land reclamation, created in section 34-32-105.

(9) "Open mining" means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. The term includes mining directly from such deposits where there is no overburden. The term includes, but is not limited to, such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

(10) "Operator" means any person, firm, partnership, association, or corporation, or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

(11) "Overburden" means all of the earth and other materials which lie above natural minerals and also means such earth and other materials disturbed from their natural state in the process of mining.

(11.5) "Performance warranty" means a warranty of the type described in section 34-32-117 (2).

(12) "Prospecting" means the act of searching for or investigating a mineral deposit. "Prospecting" includes, but is not limited to, sinking shafts, tunneling, drilling core and

bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not prospecting. The term also does not include any single activity which results in the disturbance of a single block of land totaling one thousand six hundred square feet or less of the land's surface, not to exceed two such disturbances per acre; except that the cumulative total of such disturbances will not exceed five acres statewide in any prospecting operation extending over twenty-four consecutive months.

(13) "Reclamation" means the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands. Reclamation shall be conducted in accordance with the performance standards of this article.

(14) "Refuse" means all waste material directly connected with the cleaning and preparation of substances mined by a mining operation.

Source: **L. 76:** Entire article R&RE, p. 724, § 1, effective July 1. **L. 79:** (7) and (8) amended, p. 1305, § 6, effective July 1. **L. 81:** (3.5), (6)(b), and (11.5) amended, p. 1667, §§ 1, 2, effective June 19. **L. 88:** (1) and (13) amended and (4.5) and (4.7) added, p. 1201, § 2, effective July 1. **L. 92:** (1), (4.5), and (4.7) amended and (8.5) added, p. 1937, § 32, effective July 1. **L. 93:** (1) amended and (1.5), (3.5), and (4.9) added, p. 1175, § 2, effective July 1. **L. 96:** (4) amended, p. 178, § 1, effective April 18. **L. 2006:** (1.5) amended, p. 1285, § 1, effective May 26; (4.5) and (4.7) amended, p. 217, § 11, effective August 7. **L. 2008:** (3.5) and (8) amended and (5.7) and (5.8) added, p. 935, § 1, effective May 20.

Editor's note: This section is similar to former § 34-32-103 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

The local land use development code that bans toxic or other acidic chemicals in mining operations is a reclamation standard. The mined land reclamation board is the expert agency established by the general assembly to promulgate mining operation permit regulations and reclamation standards which includes identifying what is or is not a reclamation standard.

Colo. Mining Ass'n v. Bd. of County Comm'rs of Summit County, 199 P.3d 718 (Colo. 2009).

The performance standards in the local land use and development code are expressly preempted by the statute because the code regulates reclamation activities as defined by the statute and are the same as those contemplated by the statute. *Colo. Mining Ass'n v. Summit County Bd. of County Comm'rs*, 170 P.3d 749 (Colo. App. 2007), rev'd on other grounds, 199 P.3d 718 (Colo. 2009).

34-32-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office has the full power and authority to carry out and administer the provisions of this article and article 32.5 of this title.

Source: **L. 76:** Entire article R&RE, p. 727, § 1, effective July 1. **L. 88:** Entire section amended, p. 1201, § 3, effective July 1. **L. 92:** Entire section amended, p. 1938, § 33, effective July 1. **L. 95:** Entire section amended, p. 1188, § 2, effective July 1.

Editor's note: This section is similar to former § 34-32-104 as it existed prior to 1976.

34-32-105. Office of mined land reclamation - mined land reclamation board - created. (1) There is hereby created, in the division of reclamation, mining, and safety in the department of natural resources, the office of mined land reclamation and, in the department of natural resources, the mined land reclamation board. The head of the office of mined land reclamation shall be appointed by the director. The head of the office of mined land reclamation shall have professional and supervisory experience in mined land reclamation, mining, or natural resource planning and management.

(2) The board shall consist of seven members: The executive director, who shall serve as secretary to the board; a member of the state conservation board appointed by such board; and five persons appointed by the governor with the consent of the senate. Such appointed members shall be: Three individuals with substantial experience in agriculture or conservation no more than two of whom shall have had experience in agriculture or conservation; and two individuals with substantial experience in the mining industry. Effective July 1, 1976, the terms of office of the existing members of the mined land reclamation board shall terminate, and, prior thereto, the governor shall appoint two members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1977, and three members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1979. Subsequent appointments shall be made for a term of four years. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. All members of the board shall be residents of the state of Colorado. All members of the board except for the executive director shall receive compensation for their service on the board at the rate of fifty dollars per diem and shall be reimbursed for necessary expenses incurred in the performance of their duties on the board. The board shall, by majority vote of all members, elect its chairperson from among the appointed members at its first meeting in July, 1976, and the board shall elect its chairperson from among the appointed members biannually thereafter.

(3) The board shall exercise its powers and perform its duties and functions specified in this article under the department as if the same were transferred to the department by a **type 1** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(4) The board shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this article.

Source: **L. 76:** Entire article R&RE, p. 727, § 1, effective July 1. **L. 88:** (1) and (2) amended, p. 1202, § 4, effective July 1. **L. 91:** (2) amended, p. 1432, § 3, effective July 1. **L. 92:** (1) amended, p. 1938, § 34, effective July 1. **L. 2002:** (2) amended, p. 514, § 5, effective July 1. **L. 2006:** (1) amended, p. 217, § 12, effective August 7.

Editor's note: This section is similar to former § 34-32-105 as it existed prior to 1976.

ANNOTATION

Mining reclamation board and the division of mined land reclamation are definite and distinct entities and the designation of the division as a party defendant in lieu of a designation of the board in a challenge to the board's issuance of a mining permit was a failure to join an indispensable party, since the board is an indispensable party to such an action. *Cold Springs Ranch v. Dept. of Nat. Res.*, 765 P.2d 1035 (Colo. App. 1988).

Determination by the board that extraction of peat moss was a matter within the board's discretion is not dispositive of claim for damages in trespass. The fact that the Colorado Mined Land Reclamation Act may affect how peat moss is to be removed does not deprive the courts of jurisdiction over the claim of ownership of the peat moss. *O'Connor v. Rolfes*, 899 P.2d 227 (Colo. App. 1994).

34-32-106. Duties of board. (1) The board shall:

(a) Meet at least once each month;

(b) Carry on a continuing review of the problems of mining and land reclamation in the state of Colorado;

(c) Develop and promulgate standards for land reclamation plans and substitution of affected lands as provided in section 34-32-116;

(d) Cause to be published its monthly agenda with a brief description of affected land and name of the applicant. These publications shall be in a newspaper of general circulation in the locality of the proposed mining operations listed in that month's agenda.

(e) Perform such other duties as are required pursuant to article 33 of this title.

(2) It is the duty of the department of agriculture, the department of higher education, the state conservation board, the Colorado geological survey, the division of parks and wildlife, the division of water resources, the university of Colorado, Colorado state university, Colorado school of mines, and the state forester to furnish the board and its designees, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of total reclamation and enforcement duties.

Source: **L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 79:** (1)(e) added, p. 1306, § 7, effective July 1. **L. 80:** (2) amended, p. 687, § 1, effective July 1. **L. 2002:** (2) amended, p. 515, § 6, effective July 1.

Editor's note: This section is similar to former § 34-32-106 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "1974 Land Use Local Regulation of the Mineral Industry", see Legislation in Colorado", see 51 Den. L. J. 467 15 Colo. Law 1657 (1986). (1974). For article, "State Law as a Limit on

34-32-107. Powers of board. (1) The board may initiate and encourage studies and programs through the department and in other agencies and institutions of state government relating to the development of less destructive methods of mining operations, better methods of land reclamation, more effective reclaimed land use, and coordination of the provisions of this article with the programs of other state agencies dealing with environmental, recreational, rehabilitation, and related concerns.

(2) The board may delegate authority to the office as necessary to efficiently carry out and administer the provisions of this article and article 32.5 of this title. Any person aggrieved by any final action of the office may file an appeal of such action with the board. Such appeals shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

Source: **L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 88:** Entire section amended, p. 1202, § 5, effective July 1. **L. 92:** (2) amended, p. 1938, § 35, effective July 1. **L. 95:** (2) amended, p. 1188, § 3, effective July 1.

Editor's note: This section is similar to former § 34-32-107 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974).

34-32-108. Rules and regulations. (1) The board may adopt and promulgate reasonable rules and regulations respecting the administration of this article and article 32.5 of this title and in conformity therewith.

(2) All rules and regulations shall be subject to the provisions of section 24-4-103, C.R.S.

Source: **L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 77:** (2) R&RE, p. 1556, § 1, effective July 1, 1978. **L. 95:** (1) amended, p. 1189, § 4, effective July 1.

Editor's note: This section is similar to former § 34-32-108 as it existed prior to 1976.

34-32-109. Necessity of reclamation permit - application to existing permits.

(1) Reclamation permits for mining operations shall be obtained as specified in this article.

(2) After June 30, 1976, any operator proposing to engage in a new mining operation must first obtain from the board or office a reclamation permit as specified in this article.

(3) (a) Applications for reclamation permits filed under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to and pending on July 1, 1976, shall be processed in accordance with the provisions of this article. Reclamation permits granted under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to July 1, 1976, are valid reclamation permits for the purposes of this article and are subject to the provisions of this article for the purpose of renewal. An application for renewal shall be filed at least ninety days prior to the expiration of the reclamation permit. Such applications shall be in accordance with section 34-32-112; except that the applicant need not supply information, materials, and undertakings previously supplied. The application for renewal of a reclamation permit shall show the area mined or disturbed and the area reclaimed since the original reclamation permit or the last renewal.

(b) (I) An operator with an existing reclamation permit granted under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" may apply for the conversion of his existing reclamation permit to a reclamation permit for the life of the mine under the provision for renewal set forth in this subsection (3) at any time on or after July 1, 1976. The fee for the conversion of such an existing reclamation permit shall not exceed two hundred dollars if the conversion is made during the first year of the reclamation permit.

(II) Thereafter, the provisions of section 34-32-127 (2) shall apply.

(4) Mining operations which were lawfully being conducted prior to July 1, 1976, without a reclamation permit may continue to be so conducted until October 1, 1977, if, between July 1, 1976, and October 1, 1977, the operators of such existing mining operations apply for a reclamation permit as specified in this article. Any such operator, having made application by October 1, 1977, but not having received a reclamation permit by that date, shall be permitted to continue his mining operation until such reclamation permit is either granted or denied. Any such operator who is denied a reclamation permit and continues operations after such denial or who has not applied for a reclamation permit by October 1, 1977, and continues operations after October 1, 1977, shall be considered in violation of this article and subject to the provisions of section 34-32-123. An operator of an existing operation who is in compliance with all requirements of the statutes in effect prior to July 1, 1976, and the rules, regulations, and orders issued thereunder, and any applicable stabilization and reclamation agreements shall not be denied a reclamation permit if he provides performance and financial warranties and undertakes such new reclamation program as may reasonably be required in relation to his existing operation, pursuant to the provisions of this article.

(5) (a) Reclamation permits granted pursuant to applications, including applications for renewal, filed after June 30, 1976, shall be effective for the life of the particular mining operation if the operator complies with the conditions of such reclamation permits and with the provisions of this article and rules promulgated pursuant to this article which are in effect at the time the permit is issued or amended, except as provided in paragraph (b) of this subsection (5). Nothing in this article shall be construed to abrogate the duty of the operator to comply with other applicable statutes and rules and regulations.

(b) (I) This paragraph (b) shall apply to new statutory or regulatory requirements only and shall not serve to reopen the entire permit for technical review or for modification of the post-mining land use.

(II) The board may, where good cause is shown, determine that certain regulations not in effect at the time a permit is given should be applicable to such existing permits or to any specified class or category of existing permits, if:

(A) The board or office provides individual notice of the subject matter of the proposed rule in such manner as the board may require and the time, date, and place of the rule-making hearing to operators with existing permits who may be affected by such rule;

(B) The board finds during the rule-making hearing that a failure to apply such proposed rule to existing permits or to an affected class or category of existing permits would pose a reasonable potential for danger to persons or property or the environment; and

(C) The board sets a schedule for existing permit-holding operators to comply which is reasonable in light of the gravity of the risk to be avoided, any technical considerations, the cost of compliance, and any other relevant factors.

(III) If the board makes a good faith effort to comply with the requirements of sub-paragraph (B) of subparagraph (II) of this paragraph (b) and complies with the applicable provisions of article 4 of title 24, C.R.S., the adopted rule shall not be deemed invalid on the ground that notice to the affected parties was inadequate.

(6) No governmental office of the state, other than the board, nor any political subdivision of the state shall have the authority to issue a reclamation permit pursuant to this article, to require reclamation standards different than those established in this article, or to require any performance or financial warranty of any kind for mining operations. The operator shall be responsible for assuring that the mining operation and the postmining land use comply with city, town, county, or city and county land use regulations and any master plan for extraction adopted pursuant to section 34-1-304 unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected political subdivisions. Any mining operator subject to this article shall also be subject to zoning and land use authority and regulation by political subdivisions as provided by law.

(7) An operator shall obtain a reclamation permit from the board for each mining operation with the exception of those specified in section 34-32-110 (1) and (2).

(8) After the filing of any application for a reclamation permit under this article, the board shall notify each county in which the area proposed to be mined is located and each municipality located within two miles of the area to be mined of the filing of the application.

(9) All mining operations for construction materials, as defined in section 34-32.5-103 (3), shall be subject to the provisions of article 32.5 of this title and not this article. Construction materials mining operations operating under permits issued prior to July 1, 1995, under the provisions of this article, shall continue to operate under such permits and such permits shall be deemed to be permits issued under the provisions of article 32.5 of this title.

Source: L. 76: Entire article R&RE, p. 729, § 1, effective July 1. L. 77: (6) amended, p. 1562, § 1, effective June 2. L. 81: (4) and (6) amended, p. 1667, § 3, effective June 19. L. 83: (6) amended, p. 1309, § 1, effective May 25. L. 88: Entire section amended, p. 1202, § 6, effective July 1. L. 91: (3)(b) amended, p. 1432, § 4, effective July 1. L. 92: (2) amended, p. 1939, § 36, effective July 1. L. 93: (5) amended, p. 1177, § 3, effective July 1. L. 96: (9) added, p. 178, § 2, effective April 8.

Editor's note: This section is similar to former § 34-32-109 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Eligibility for permits. Unless the subject land is zoned for mining use or permission for such use is granted by the local government following special use review proceedings, an operator is not eligible to receive a mining per-

mit from the reclamation board. *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

Mining reclamation board and the division of mined land reclamation are definite and distinct entities and the designation of the division as a party defendant in lieu of a designation of the board in a challenge to the board's issuance of a mining permit was a failure to join an indispensable party, since the board is an

indispensable party to such an action. *Cold Springs Ranch v. Dept. of Nat. Res.*, 765 P.2d 1035 (Colo. App. 1988).

Applied in *Hudspeth v. Bd. of County Comm'rs*, 667 P.2d 775 (Colo. App. 1983);

Conda, Inc. v. State Bd. of Land Comm'rs, 782 P.2d 851 (Colo. App. 1989), *aff'd sub. nom. Land Comm'rs v. Mined Land Reclamation Bd.*, 809 P.2d 974 (Colo. 1991).

34-32-110. Limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations pursuant to an application submitted prior to July 1, 1993, on less than two acres which mining operations will result in the extraction of less than seventy thousand tons per year of mineral or overburden may apply for the expedited processing of such person's permit. On and after July 1, 1993, all applications for permits pursuant to this section shall be submitted in accordance with subsection (2) of this section.

(b) and (c) (Deleted by amendment, L. 93, p. 1178, § 4, effective July 1, 1993.)

(d) (I) A financial warranty may be required to be posted by the mine operator, which warranty shall not exceed one thousand five hundred dollars. Such warranty, if forfeited pursuant to section 34-32-118, may be utilized by the board to reclaim any mined land subject to this subsection (1).

(II) This paragraph (d) shall be applicable to financial warranties provided for permits applied for pursuant to this subsection (1) before July 1, 1993.

(e) (Deleted by amendment, L. 93, p. 1178, § 4, effective July 1, 1993.)

(2) (a) Any person desiring to conduct mining operations on less than ten acres, which mining operations will result in the extraction of less than seventy thousand tons of mineral or overburden per calendar year, prior to commencement of mining, shall file with the office, on a form approved by the board, an application for a permit to conduct mining operations; except that applications for in situ leach mining shall be filed pursuant to section 34-32-112.5 (3) (d). This application shall contain the following:

(I) The address and telephone number of the general office and the local address or addresses and telephone number of the operator;

(II) The name, address, and telephone number of the owner of the surface of the affected land;

(III) The name of the owner of the subsurface rights of the affected land;

(IV) A statement that the operations will be conducted pursuant to the terms and conditions listed on the application and in accordance with the provisions of this article and the rules and regulations promulgated pursuant to this article at the time the permit was approved or amended;

(V) A map showing information sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) The approximate size of the affected land;

(VII) Information sufficient to describe or identify the type of mining operation proposed and how the operator intends to conduct it;

(VIII) A statement that the operator has applied for necessary local government approval;

(IX) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32-116.

(b) The application required by this subsection (2) shall be sent to the office. If the office denies the application, the applicant may appeal to the board for final determination.

(3) A fee as specified in section 34-32-127 (2), and a financial warranty in an amount the board shall determine pursuant to section 34-32-117 (4), shall accompany the application and shall be paid by the applicant.

(4) The operator, at any time after the completion of reclamation, may notify the board that the land has been reclaimed. Upon receipt of the notice that the affected land or a portion of it has been reclaimed, the board shall cause the land to be inspected and shall release the performance and financial warranties or appropriate portions thereof within thirty days after the board finds the reclamation to be satisfactory and in accordance with a plan agreed upon by the board and the operator.

(5) After July 1, 1988, any operator proposing to engage in a mining operation as provided in this section shall file a permit application to engage in mining prior to the start of the mining operation.

(6) Applications for permits made pursuant to subsection (2) of this section shall be processed and final action taken thereon within thirty days of the filing of such application. If action upon the application is not completed within thirty days, the permit shall be deemed approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount provided in subsection (3) of this section. The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall, so far as practicable, apply to this section, but the board shall, by regulation, provide simplified and reduced procedures and requirements which are applicable to the thirty-day period. Within the thirty-day period, the board may make a determination on an application as provided in sections 34-32-114 and 34-32-115.

(7) (a) Any operator conducting an operation under a permit issued under this section who has held the permit for two consecutive years or more and who subsequently desires to expand it to a size in excess of the limitation set forth in subsection (1) or (2) of this section may request the conversion of his permit by filing an application for a permit pursuant to subsection (2) of this section or section 34-32-112; except that the applicant need not supply information, materials, and other data and undertakings previously supplied, including any additional materials provided to the board during the course of his current operation, or resulting from the board's inspections thereof.

(b) Applications for conversion of a permit under this subsection (7) shall be processed and final action taken thereon in accordance with subsection (2) of this section or section 34-32-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (7) or section 34-32-115, the conversion shall be deemed approved, and a permit for the life of the mine shall be promptly issued upon presentation by the applicant of a financial warranty subject to the limitations provided in subsection (3) of this section, section 34-32-115 (3), or section 34-32-117 (4).

(c) The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall so far as practicable apply to this section.

(d) The board or office shall not deny the conversion of a permit for any reason other than those set forth in section 34-32-115 (4).

(8) Repealed.

Source: **L. 76:** Entire article R&RE, p. 730, § 1, effective July 1. **L. 79:** (9) added, p. 1251, § 1, effective May 25. **L. 81:** (9) amended, p. 1677, § 1, effective April 30; (3), (5), (7), and (8)(b) amended, p. 1668, § 4, effective June 19. **L. 82:** (9) amended, p. 628, § 38, effective April 2. **L. 85:** (3) amended, p. 1127, § 1, effective April 24. **L. 88:** Entire section R&RE, p. 1204, § 7, effective July 1. **L. 91:** (8) amended, p. 756, § 31, effective April 4; (3) amended, p. 1419, § 2, effective May 6; (3) and (8) amended, p. 1433, § 5, effective July 1; (8) amended, p. 1072, § 51, effective July 1. **L. 92:** (8) amended, p. 2181, § 49, effective June 2; IP(1)(a), (1)(b), (1)(c), (1)(e), IP(2)(a), (2)(b), and (7)(d) amended, p. 1939, § 37, effective July 1. **L. 93:** (1) and IP(2)(a) amended, p. 1178, § 4, effective July 1. **L. 96:** (8) repealed, p. 179, § 3, effective April 18. **L. 2008:** IP(2)(a) amended, p. 936, § 2, effective May 20.

Editor's note: (1) This section is similar to former § 34-32-109 as it existed prior to 1976.

(2) Amendments to subsection (3) by Senate Bill 91-177 and House Bill 91-1115 were harmonized. Amendments to subsection (8) by House Bill 91-1115 and House Bill 91-1198 were harmonized.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974).

34-32-111. Special permits - ten-day processing. (Repealed)

Source: **L. 76:** Entire article R&RE, p. 732, § 1, effective July 1. **L. 81:** (2)(d), (3)(h), (5), and (6) amended, p. 1669, § 5, effective June 19. **L. 84:** (2)(b) amended, p. 1122, § 31, effective June 7. **L. 88:** (3)(f) and (3)(i) amended, p. 1208, § 8, effective July 1. **L. 91:** (2)(c) amended, p. 1433, § 6, effective July 1; (7) amended, p. 1072, § 52, effective July 1. **L. 93:** (1) amended, p. 1752, § 1, effective June 6; (2)(d) and (6) amended, p. 1179, § 5, effective July 1. **L. 96:** Entire section repealed, p. 180, § 9, effective April 18.

34-32-112. Application for reclamation permit - changes in permits - fees - notice.

(1) Any operator desiring to obtain a reclamation permit shall make written application to the board or to the office for a permit on forms provided by the board. The reclamation permit or the renewal of an existing permit, if approved, shall authorize the operator to engage in such mining operation upon the affected land described in such application for the life of the mine. Such application shall consist of the following:

- (a) Five copies of the application;
- (b) A reclamation plan submitted with each of the applications;
- (c) An accurate map of the affected land submitted with each of the applications;
- (d) The application fee as specified in section 34-32-127 (2).
- (2) The application forms shall state:
 - (a) The legal description and area of affected land;
 - (b) The owner of the surface of the area of affected land;
 - (c) The owner of the substance to be mined;
 - (d) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;
 - (e) The address and telephone number of the general office and the local address and telephone number of the applicant;
 - (f) Information sufficient to describe or identify the type of mining operation proposed and how the operator, in his sole discretion, intends to conduct it;
 - (g) The size of the area to be worked at any one time;
 - (h) The timetable estimating the periods of time which will be required for the various stages of the mining operation. The operator shall not be required to meet the timetable, nor shall the timetable be subject to independent review by the board or the office.
 - (i) For in situ leach mining operations, a certification by the applicant that no violations exist as described in section 34-32-115 (5) (d). If the applicant is not able to so certify, the applicant shall describe the circumstances as may be relevant to section 34-32-115 (5) (d) and provide the board or office any additional information reasonably requested regarding any such circumstances.
 - (j) For in situ leach mining operations, a description of at least five in situ leach mining operations that demonstrates the ability of the applicant to conduct the proposed mining operation without any leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater-containing minerals, radionuclides, or other constituents mobilized, liberated, or introduced by the in situ leach mining process into any groundwater outside of the permitted in situ leach mining area. The fact that the applicant was not involved in any of the five operations shall not preclude the applicant from making the demonstration required by this paragraph (j).

(3) The reclamation plan shall include provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation shall be required on all the affected land. The reclamation plan shall include:

(a) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;

(b) A description of how the reclamation plan will be implemented to meet the requirements of section 34-32-116;

(c) A proposed plan or schedule indicating when and how reclamation will be implemented. Such plan or schedule shall not be tied to any date specific, but shall be tied to the implementation or completion of different stages of the mining operation.

(d) Repealed.

(e) A map of all of the proposed affected land by all phases of the total scope of the mining operation. It shall indicate the following:

(I) The expected physical appearance of the area of the affected land, correlated to the proposed timetables required by paragraph (h) of subsection (2) of this section and the plan or schedule required by paragraph (c) of this subsection (3); and

(II) Portrayal of the proposed final land use for each portion of the affected lands.

(4) The accurate map of the affected lands shall:

(a) Be made by a professional land surveyor, professional engineer, or other qualified person;

(b) Identify the area which corresponds with the application;

(c) Show adjoining surface owners of record;

(d) Be made to a scale of not less than one hundred feet to the inch and not more than six hundred sixty feet to the inch;

(e) Show the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred feet of all boundaries of such area;

(f) Show the total area to be involved in the operation, including the area to be mined and the area of affected land;

(g) Show the topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land in question;

(h) Indicate on a map or by a statement the general type, thickness, and distribution of soil over the area in question, including the affected land;

(i) Show the type of present vegetation covering the affected land.

(5) The reclamation plan shall also show by statement or map the depth and thickness of the ore body or deposit to be mined and the thickness and type of the overburden to be removed.

(6) An application fee as specified in section 34-32-127 (2) shall be paid.

(7) Each phase of reclamation is to be completed within five years after the date the operator advises the board that such phase has commenced, as provided in the introductory portion of section 34-32-116 (7) (q); except that such period may be extended by the board upon a finding that additional time is necessary for the completion of the terms of the reclamation plan.

(8) An operator may, within the term of a reclamation permit, apply to the board or to the office for a reclamation permit amendment increasing the acreage to be affected or otherwise revising the reclamation plan. Where applicable, there shall be filed with any application for amendment a map and an application with the same content as required for an original application. The amended application shall be accompanied by a fee as specified in section 34-32-127 (2). Where an operator files a notice of temporary cessation pursuant to section 34-32-103 (6) (a) (II), such notice shall be accompanied by a fee as specified in section 34-32-127 (2). In addition, supplemental performance and financial warranties, as determined by the board or office, for any additional acreage shall be submitted. If the area of the original application is reduced, the amount of the financial warranty, as determined by the board or office, shall proportionately be reduced. Renewal applications shall contain the information required in the original application if different from that in the original application or renewal. The renewal reclamation permit shall show the area mined or disturbed and the area reclaimed since the original permit or the last renewal. Applications for renewal or amendment of a reclamation permit shall be reviewed by the board or the office in the same manner as applications for new reclamation permits.

(9) Information provided the board or the office in an application for a reclamation permit relating to the location, size, or nature of the deposit or information required by subsection (5) of this section and marked confidential by the operator shall be protected as confidential information by the board and the office and not be a matter of public record in the absence of a written release from the operator or until such mining operation has been terminated. A person who willfully and knowingly violates the provisions of this subsection (9) or section 34-32-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(10) (a) Upon the filing of an application for a reclamation permit with the board or the office, the applicant shall place a copy of such application for public inspection at the office of the board and at the office of the county clerk and recorder of the county in which the affected land is located. The copy of the application placed at the office of the county clerk and recorder shall not be recorded but shall be retained there until said application has been heard by the board or the office and be available for inspection during such period, and, at the end of such period, such copy may be reclaimed or destroyed by the applicant. The information exempted by subsection (9) of this section shall be deleted from such file copies.

(b) The applicant shall cause notice of the filing of such applicant's application to be published in a newspaper of general circulation in the locality of the proposed mining operation once a week for four consecutive weeks, commencing not more than ten days after the filing of said application with the board or the office. Such notice shall contain information regarding the identity of the applicant, the location of the proposed mining operation if such information does not violate the provisions of subsection (9) of this section, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location where additional information about the operation may be obtained, and the location and final date for filing objections with the board or the office.

(c) In addition, the applicant shall mail a copy of such notice immediately after first publication to all owners of record of the surface rights of the affected land, to the owners of record of immediately adjacent lands, to the owners of record of lands within three miles of affected land for in situ leach mining operations, and to any other persons who are owners of record that may be designated by the board that might be affected by the proposed mining operation. Proof of such notice and mailing, such as certified mail with return receipt requested where possible, shall be provided to the board or the office and become part of the application.

Source: **L. 76:** Entire article R&RE, p. 733, § 1, effective July 1. **L. 79:** (6) amended, p. 1251, § 2, effective May 25; (10)(a) amended, p. 1253, § 1, effective July 1. **L. 81:** (6) amended, p. 1677, § 2, effective April 30; (8) amended, p. 1679, § 1, effective May 21; (8) amended, p. 1669, § 6, effective June 19. **L. 83:** (9) amended, p. 2051, § 22, effective October 14. **L. 84:** (4)(a) amended, p. 1122, § 32, effective June 7. **L. 88:** IP(1), (2)(f), (2)(h), IP(3), (3)(c), (3)(e)(I), (6) to (9), and (10)(a) amended and (3)(d) repealed, pp. 1208, 1215, §§ 9, 16, effective July 1. **L. 91:** (6) amended, p. 757, § 32, effective April 4; IP(1), (2)(h), (8), (9), and (10) amended, p. 1420, § 3, effective May 6; (1)(d), (6), and (8) amended, p. 1434, § 7, effective July 1; (6) amended, p. 1072, § 53, effective July 1. **L. 92:** IP(1), (2)(h), (8), (9), and (10) amended, p. 1940, § 38, effective July 1. **L. 2002:** (9) amended, p. 1546, § 300, effective October 1. **L. 2004:** (10)(c) amended, p. 1784, § 1, effective June 4. **L. 2008:** (2)(i) and (2)(j) added and (10)(c) amended, pp. 936, 937, §§ 3, 4, effective May 20.

Editor's note: (1) This section is similar to former § 34-32-110 as it existed prior to 1976.

(2) Amendments to subsection (8) by House Bill 81-1097 and House Bill 81-1518 were harmonized.

(3) Amendments to subsection (6) by House Bill 91-1115 and House Bill 91-1198 were harmonized. Amendments to subsection (8) by Senate Bill 91-177 and House Bill 91-1115 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Applied in *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983); *Conda, Inc. v. State Bd. of Land*

Comm'rs, 782 P.2d 851 (Colo. App. 1989), *aff'd* sub. nom. *Land Comm'rs v. Mined Land Reclamation Bd.*, 809 P.2d 974 (Colo. 1991).

34-32-112.5. Designated mining operation - rules. (1) This section shall apply only to designated mining operations as defined in section 34-32-103 (3.5). All nondesignated mining operations are exempt from this section. The board may propose that the general assembly enact specific requirements for exempted operations as set forth in subsection (2) of this section.

(2) If an operator demonstrates to the board at the time of applying for a permit or at a subsequent hearing that toxic or acidic chemicals are not stored or used on-site and that acid- or toxic-producing materials will not be used, stored, or disturbed in quantities sufficient to adversely affect any person, any property, or the environment, the board shall exempt such operations whether conducted pursuant to section 34-32-110 or otherwise. The board may promulgate rules governing the conduct of mining operations which are exempted pursuant to this subsection (2).

(3) When promulgating rules governing designated mining operations, the board shall consider the economic reasonableness, the technical feasibility, and the level or degree of any environmental concerns which may result from:

(a) Designated mining operations which qualify for permits under section 34-32-110 which shall be referred to as "110d" permits;

(b) Designated mining operations which qualify for permits under section 34-32-112, but which affect less than fifty acres and extract less than one million tons per year which shall be referred to as "112d-1" permits;

(c) Designated mining operations which qualify for permits under section 34-32-112 which do not qualify as 112d-1 permits but which affect less than one hundred acres and which extract less than five million tons per year which shall be referred to as "112d-2" permits; or

(d) Any other designated mining operation which shall be referred to as "112d-3" permits.

(4) (a) By rule or as a condition of issuing a permit, the board or office may require an operator to have an inspection and certification of any new environmental protection facility during its construction at a designated mining operation. Any such rule or condition may include a prohibition on subsequent phases of construction or operation until any required inspections have been performed and the requisite certification has been obtained.

(b) (I) An inspection and certification shall be conducted by a properly qualified professional.

(II) The office may be present during any inspection and certification conducted pursuant to subparagraph (I) of this paragraph (b) and may require the operator to take any corrective actions necessary to obtain and verify certification.

(III) Any inspection and certification conducted by or under the supervision of the office shall be conducted promptly after the office is notified that the facility is ready to be inspected and shall not unduly delay the construction or operation schedule.

(5) (a) An application for an in situ leach mining operation shall include a baseline site characterization and a plan for ongoing monitoring of the affected land and affected surface and groundwater. Prior to submitting an application, the prospective applicant shall confer with the office concerning the baseline characterization and plan for ongoing monitoring of the affected land and affected surface and groundwater. The board or the office may retain an independent third-party professional expert to oversee baseline site characterization, monitor field operations, or review any portion of the information collected, developed, or submitted by an applicant or prospective applicant pursuant to this subsection (5). The prospective applicant shall pay the reasonable costs incurred by the board or office and the

expert selected by the board or office; except that the board or office shall define the scope of work to be accomplished by the expert and shall review and approve all invoices to be paid by the prospective applicant. The prospective applicant may object to the selection of any such expert if the prospective applicant has knowledge or information that the expert lacks the professional qualifications to accomplish the scope of work, has a conflict of interest with the prospective applicant or the project that will be the subject of the application, or has a bias that could influence the objectivity of the work to be accomplished. If the board or office concurs with the prospective applicant, a new expert shall be selected by the board or office.

(b) Prior to submitting an application, a prospective applicant for in situ leach mining shall design and conduct a scientifically defensible groundwater, surface water, and environmental baseline characterization and monitoring plan for the proposed mining operation. This plan shall be designed in such a manner as to:

(I) Thoroughly characterize premining site conditions;

(II) Detect any subsurface excursions of groundwater containing chemicals used in or mobilized by in situ leach mining during the mining operations; and

(III) Evaluate the effectiveness of postmining reclamation and groundwater reclamation plans.

(c) The design and operation of the baseline characterization and monitoring plan for in situ leach mining, together with all information collected in accordance with the plan, shall be a matter of public record regardless of whether such activities are conducted pursuant to a notice of intent to conduct prospecting operations under section 34-32-113.

(d) (I) Notwithstanding section 34-32-103 (6), in the case of in situ leach mining, reclamation of groundwater shall begin in accordance with the reclamation plan approved by the board immediately when either of the following occur:

(A) Detection pursuant to the baseline characterization and monitoring plan approved by the board of any subsurface excursion of groundwater outside of the affected land containing chemicals used in or mobilized by in situ leach mining during the mining operations or groundwater outside of the affected land that otherwise fails to meet the standards established in section 34-32-116 (8);

(B) Cessation of production operations.

(II) If the operator plans to cease operation on a temporary basis, the operator shall notify the board at least thirty days prior to such temporary cessation setting forth both the reasons for the temporary cessation and the expected duration of the temporary cessation. The operator shall maintain a groundwater monitoring and pumping regime satisfactory to the board during any period of temporary cessation of operations. If, in the judgment of the board, the expected duration of any temporary cessation will be of such length that the board believes that groundwater reclamation should commence, it shall so order.

Source: L. 93: Entire section added, p. 1180, § 6, effective July 1. **L. 2008:** (5) added, p. 937, § 5, effective May 20.

34-32-113. Prospecting notice - reclamation requirements - rules. (1) Any person desiring to conduct prospecting shall, prior to entry upon the lands, file with the board a notice of intent to conduct prospecting operations on a form approved by the board. Such notice shall be accompanied by a fee as specified in section 34-32-127 (2).

(2) The notice form shall contain the following:

(a) The name of the person or organization doing the prospecting;

(b) A statement that prospecting will be conducted pursuant to the terms and conditions listed on the approved form;

(c) A brief description of the type of operations which will be undertaken;

(d) A description of the lands to be prospected by township and range;

(e) An approximate date of commencement of operations; and

(f) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32-116.

(3) All information provided to the board in a notice of intent to conduct prospecting or a modification of such a notice is a matter of public record subject to the "Colorado Open

Records Act", part 2 of article 72 of title 24, C.R.S., including, in the case of a modification, the original notice of intent; except that information relating to the mineral deposit location, size, or nature and, as determined by the board, other information designated by the operator as proprietary or trade secrets or that would cause substantial harm to the competitive position of the operator shall be protected as confidential information by the board and shall not be a matter of public record in the absence of a written release from the operator or until a finding by the board that reclamation is satisfactory. Such information designated as exempt shall remain confidential until a final determination by the board. The board shall promulgate rules implementing this subsection (3) and shall consider information including the timing of the disclosure of the operator's identity.

(4) (a) Upon filing the notice of intent to conduct prospecting, the person shall provide financial warranty in the amount of two thousand dollars per acre of the land to be disturbed or such other amount as determined by the board.

(b) A person may submit statewide warranties for prospecting if such warranties are in an amount fixed by the board by rule and such person otherwise complies with the provisions of this section for every area to be prospected.

(5) Upon completion of the prospecting, there shall be filed with the board a notice of completion of prospecting operations. Within ninety days after the filing of the notice of completion, the board shall notify the person who had conducted the prospecting operations of the steps necessary to reclaim the land.

(5.5) (a) Without regard to the one thousand six hundred square foot limitation of section 34-32-103 (12), all drill holes sunk for the purpose of prospecting for locatable or leasable minerals on any land within the state of Colorado shall be plugged, sealed, or capped pursuant to this subsection (5.5) by the person conducting the prospecting. This subsection (5.5) shall not apply to holes drilled in conjunction with a mining operation for which the board has issued a permit nor to wells or holes regulated pursuant to section 34-33-117 and to article 60 of this title or article 80, 90, 91, or 92 of title 37, C.R.S.

(b) Drill holes sunk for the purpose of prospecting shall be abandoned in the following manner:

(I) Any artesian flow of groundwater to the surface shall be eliminated by a plug made of cement or similar material or by a procedure sufficient to prevent such artesian flow.

(II) Drill holes which have encountered any aquifer in volcanic or sedimentary rock, as aquifer is defined in section 37-90-103 (2), C.R.S., shall be sealed utilizing a sealing procedure which is adequate to prevent fluid communication between aquifers.

(III) Each drill hole shall be securely capped at a minimum depth compatible with local cultivation practices or at a minimum of two feet below either the original land surface or the collar of the hole, whichever is the lower elevation. The cap is to be made of concrete or other material which is satisfactory for such capping. The site shall be backfilled above the cap to the original land surface.

(IV) If any drill hole is to be ultimately used as or converted to a water well, the user shall comply with the applicable provisions of title 37, C.R.S.

(V) Each drill site shall be reclaimed pursuant to section 34-32-116, including, if necessary, reseeding if grass or any other crop was destroyed.

(c) Abandonment in the manner provided in paragraph (b) of this subsection (5.5) shall occur immediately following the drilling of the hole and the probing for minerals in the prospecting process. However, a drill hole may be maintained as temporarily abandoned without being plugged, sealed, or capped. However, no drill hole which is to be temporarily abandoned without being plugged, sealed, or capped shall be left in such a condition as to allow fluid communication between aquifers. Such temporarily abandoned drill holes shall be securely covered in a manner which will prevent injury to persons and animals.

(d) No later than sixty days after the completion of the abandonment pursuant to paragraph (b) of this subsection (5.5) of any drill hole that has artesian flow at the surface, the person conducting the prospecting shall submit to the head of the office a report containing the location of such hole to within two hundred feet of its actual location, the estimated rate of flow of such artesian flow, if such is known, and the facts of the technique used to plug such hole.

(e) No later than twelve months after the completion of the abandonment of any drill hole pursuant to paragraph (b) of this subsection (5.5), there shall be filed by the person conducting the prospecting with the head of the office a report containing the location of the hole to the nearest forty-acre legal subdivision and the facts of the technique used to plug, seal, or cap the hole.

(f) The head of the office may not waive any of the administrative provisions of this subsection (5.5).

(6) The board shall inspect the lands prospected within thirty days after the person prospecting the lands completes the reclamation and notifies the board that the reclamation is finished. If the board finds the reclamation satisfactory, the board shall release applicable performance and financial warranties.

(7) The financial warranty shall not be held for more than thirty days after the completion of the reclamation.

(8) The board is authorized to inspect any ongoing prospecting operation or any prospecting operation prior to the request for release of performance and financial warranties, in order to determine compliance with the terms of this article.

(9) Upon the submittal of a notice of intent to conduct prospecting operations or a modification of such a notice, the person submitting such notice or modification shall give an electronic version of the notice or modification, except for that information exempted from public disclosure under subsection (3) of this section and that information designated by the person as exempt from disclosure under subsection (3) of this section, to the board in a format determined by the board. The division shall post such version of the notice or modification on its web site.

Source: **L. 76:** Entire article R&RE, p. 736, § 1, effective July 1. **L. 80:** (5.5) and (8) added, p. 687, § 2, effective July 1. **L. 81:** (4), (6), (7), and (8) amended, p. 1670, § 7, effective June 19. **L. 83:** (3) amended, p. 2051, § 23, effective October 14. **L. 91:** (1) amended, p. 1435, § 8, effective July 1. **L. 92:** (5.5)(d), (5.5)(e), and (5.5)(f) amended, p. 1941, § 39, effective July 1. **L. 93:** (4) amended, p. 1181, § 7, effective July 1. **L. 2008:** (3), (5.5)(d), (5.5)(e), and (5.5)(f) amended and (9) added, p. 1705, § 1, effective June 2. **L. 2009:** (3) amended, (SB 09-292), ch. 369, p. 1979, § 111, effective August 5.

Editor's note: This section is similar to former § 34-32-111 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974). For article, "Water for Mining and Milling Operations — Part I", see 13 Colo. Law.

240 (1984). For article, "Water for Mining and Milling Operations", see 13 Colo. Law. 437 (1984).

34-32-114. Protests and petitions for hearing. Any person has the right to file written objections to or statements in support of an application for a permit with the board. Such protests or petitions for a hearing shall be timely filed with the board not more than twenty days after the date of last publication of notice pursuant to section 34-32-112 (10). For good cause shown in the protest or petition documents, the board, in its discretion, may hold a hearing pursuant to section 34-32-115 on the question of whether the permit should be granted. The applicant shall be notified within ten days of any objections to his application and be supplied with a copy of the written objections.

Source: **L. 76:** Entire article R&RE, p. 737, § 1, effective July 1.

34-32-115. Action by board - appeals. (1) Upon receipt of an application for a permit and all fees due from the operator, the board or the office shall set a date for the consideration of such application not more than ninety days after the date of filing. At that time, the board or the office shall approve or deny the application or, for good cause shown, refer the application for a hearing on the question of whether the permit should be granted.

(2) Prior to the holding of any such hearing, the board or the office shall provide notice to any person previously filing a protest or petition for a hearing or statement in support of an application pursuant to section 34-32-114 and shall publish notice of the time, date, and location of the hearing in a newspaper of general circulation in the locality of the proposed mining operation once a week for two consecutive weeks immediately prior to the hearing. The hearing shall be conducted as a proceeding pursuant to article 4 of title 24, C.R.S. A final decision on the application shall be made within one hundred twenty days after the receipt of the application. In the event of complex applications, serious unforeseen circumstances, or significant snow cover on the affected land that prevents a necessary on-site inspection, the board or the office may reasonably extend the maximum time sixty days. In the event of in situ leach mining operations, a final decision on the application will be made within two hundred forty days.

(3) If action upon the application is not completed within the period specified in subsection (2) of this section, the permit shall be considered to be approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand dollars per acre affected or such other amount as determined by the board.

(4) The board or the office shall grant a permit to an operator if the application complies with the requirements of this article. The board or the office shall not deny a permit if the operator demonstrates compliance with the following:

(a) The application is complete and the performance and financial warranties have been provided.

(b) The applicant has paid the required fee.

(c) (I) No part of the proposed mining operation, the reclamation program, or the proposed future use is or may be contrary to the laws or regulations of this state or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation.

(II) The board may require a statement by the applicant identifying which permits, licenses, and approvals the applicant holds or will be seeking for the proposed mining and reclamation activities.

(d) The mining operation will not adversely affect the stability of any significant, valuable, and permanent manmade structures located within two hundred feet of the affected land, except where there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator.

(e) Repealed.

(f) The mining operation is not located upon lands:

(I) Where mining operations are prohibited by law or regulation within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, or national recreation areas;

(II) Which are within or without the boundaries of, and are owned, leased, or have been developed by, any recreational facility established pursuant to article 7 of title 29, C.R.S., unless otherwise authorized by the appropriate governing body or unless the operation will not create any surface disturbance therein;

(III) Which are within the boundaries of, and are owned, leased, or have been developed by, any park and recreation district established pursuant to article 1 of title 32, C.R.S., unless otherwise authorized by the board of directors of the district or unless the operation will not create any surface disturbance therein; and

(IV) That are within the boundaries of any unit of the state park system or any state recreational area in which the entire fee estate is owned by the state of Colorado, unless the mining operation is approved jointly by the board, by the governor, and by the parks and wildlife commission, or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan conforms to the requirements of section 34-32-116.

(h) For designated mining operations, an environmental protection plan has been submitted and conforms to the requirements of sections 34-32-116 and 34-32-116.5.

(5) (a) The board or the office may deny a permit for in situ leach mining operations based on scientific or technical uncertainty about the feasibility of reclamation and shall

deny such a permit if the applicant fails to demonstrate that reclamation can and will be accomplished in compliance with this article, including the protection of groundwater and other environmental resources and human health.

(b) The board or the office shall deny a permit for in situ leach mining if the applicant fails to demonstrate by substantial evidence that it will reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization, or in the statewide radioactive materials standards or tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission, to either of the following:

(I) Premining baseline water quality or better, as established by the baseline site characterization conducted pursuant to section 34-32-112.5 (5); or

(II) That quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission.

(c) The board or the office may deny a permit for in situ leach mining if the existing or reasonably foreseeable potential future uses for any potentially affected groundwater, whether classified or unclassified pursuant to section 25-8-203, C.R.S., include domestic or agricultural uses and the board determines the in situ leach mining will adversely affect the suitability of the groundwater for such uses.

(d) The board or the office may deny or revoke a permit for in situ leach mining if:

(I) The applicant, an affiliate, officer, or director of the applicant, the operator, or the claim holder has demonstrated a pattern of willful violations of the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to this article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application pursuant to section 34-32-112 (2) (i);

(II) (A) Except as specified in sub-subparagraph (B) of this subparagraph (II), the applicant or any affiliate, officer, or director of the applicant has in the ten years prior to submission of the application violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to this article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application pursuant to section 34-32-112 (2) (i).

(B) The board or office may issue or reinstate a permit if the applicant submits proof that the violation referred to in sub-subparagraph (A) of this subparagraph (II) has been corrected or may conditionally issue or reinstate a permit if the violation is in the process of being corrected to the satisfaction of the board or if the applicant submits proof that the applicant has filed and is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. For purposes of this sub-subparagraph (B), a direct administrative or judicial appeal to contest the validity of the alleged violation shall not include an appeal of an applicant's relationship to an affiliate. If the violation is not successfully abated or if the violation is upheld on appeal, the board or office shall revoke or deny the conditional permit issued or reinstated pursuant to this sub-subparagraph (B).

Source: **L. 76:** Entire article R&RE, p. 737, § 1, effective July 1. **L. 81:** (3) and (4)(a) amended, p. 1670, § 8, effective June 19; (4)(f)(III) amended, p. 1627, § 39, effective July 1. **L. 88:** IP(4) and (4)(g) amended and (4)(e) repealed, pp. 1210, 1215, §§ 10, 16, effective July 1. **L. 91:** (1), (2), and IP(4) amended, p. 1421, § 4, effective May 6. **L. 92:** (1), (2), and IP(4) amended, p. 1942, § 40, effective July 1. **L. 93:** Entire section amended, p. 1182, § 8, effective July 1. **L. 2008:** (2) amended and (5) added, p. 939, § 6, effective May 20. **L. 2012:** (4)(f)(IV) amended, (HB 12-1317), ch. 248, p. 1234, § 87, effective June 4.

Editor's note: This section is similar to former § 34-32-117 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L. J. 467 (1974). For article, "Oil Shale and Water Qual-

ity: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981).

Eligibility for permits. Unless the subject land is zoned for mining use or permission for such use is granted by the local government following special use review proceedings, an operator is not eligible to receive a mining permit from the reclamation board. *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

Standards applied to modification by board of its decision. Unless prohibited by statute, a government licensing agency may modify its decision to grant or transfer a permit to rectify errors or to alter its ruling on the basis of newly discovered evidence, but the modification must be for good cause and it must be within any statutory time limits. *N.J. Zinc Co. v. Mined Land Reclamation*, 738 P.2d 51 (Colo. App. 1987).

Any modification so allowed must be based on facts which could not have been discovered before the original decision was rendered. *N.J. Zinc Co. v. Mined Land Reclamation*, 738 P.2d 51 (Colo. App. 1987).

The county's ban on the use of toxic or acidic ore-precressing reagents in heap or vat leach applications exceeds its statutory authority in a field the general assembly identified and granted the mined land reclamation board authority to permit and regulate in the Colorado Mined Land Reclamation Act; therefore, the county ordinance is impliedly preempted by the Act. *Colo. Mining Ass'n v. Bd. of County Comm'rs of Summit County*, 199 P.3d 718 (Colo. 2009).

34-32-116. Duties of operators - reclamation plans. (1) Every operator to whom a permit is issued pursuant to the provisions of this article shall perform such reclamation as is prescribed by the reclamation plan adopted pursuant to this section.

(2) Reclamation plans shall be based upon provisions for, or satisfactory explanation of, all general requirements for the type of reclamation chosen. The details of the plan shall be appropriate to the type of reclamation designated by the operator and shall be based upon the advice of experienced and technically trained personnel.

(3) On the anniversary date of the permit each year, the operator shall submit a report and a map showing the extent of current disturbances to affected land, reclamation accomplished to date and during the preceding year, new disturbances that are anticipated to occur during the upcoming year, and reclamation that will be performed during the upcoming year.

(4) All operators shall submit, in addition to the plan and map, an annual fee as specified in section 34-32-127 (2).

(5) (Deleted by amendment, L. 91, p. 1435, § 9, effective July 1, 1991.)

(6) For operators who have filed an application pursuant to section 34-32-110 (1), the operator shall submit an annual fee as specified in section 34-32-127 (2) and a map or sketch describing the acreage affected to date and the acreage reclaimed to date.

(7) Reclamation plans and the implementation thereof shall conform to the following general requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in accordance with paragraph (j) of this subsection (7).

(b) Earth dams shall be constructed, if necessary to impound water, if the formation of such impoundments will not interfere with mining operations, damage adjoining property, or conflict with water pollution laws, rules or regulations of the federal government or the state of Colorado, or any local government pollution ordinances.

(c) Acid-forming or toxic-producing material that has been mined shall be handled in a manner that will protect the drainage system from pollution.

(d) All refuse shall be disposed in a manner that will control unsightliness, or deleterious effects from such refuse.

(e) In those areas where revegetation is part of the reclamation plan, land shall be revegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration and at least equal in extent of cover to the natural vegetation of the surrounding area. Native species should receive first consideration, but introduced species may be used in the revegetation process when found desirable by the board.

(f) Where it is necessary to remove overburden in order to mine the mineral, topsoil shall be removed from the affected land and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved

from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation. If, in the discretion of the board, such topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other strata which are best able to support vegetation.

(g) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation shall be minimized. Nothing in this paragraph (g) shall be construed to allow the operator to avoid compliance with other statutory provisions governing well permits and augmentation requirements and replacement plans when applicable.

(h) Areas outside of the affected land shall be protected from slides or damage occurring during the mining operation and reclamation.

(i) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion and attendant air and water pollution.

(j) On all affected land, the operator in consultation with the landowner where possible, subject to the approval of the board, shall determine which parts of the affected land shall be reclaimed for forest, range, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Prior to approving any new reclamation plan or approving a change in any existing reclamation plan as provided in this section, the board shall confer with the local board of county commissioners and the board of supervisors of the conservation district if the mining operation is within the boundaries of a conservation district. Reclamation shall be required on all the affected land.

(k) If the operator's choice of reclamation is forest planting, the operator may, with the approval of the office, select the type of trees to be planted. Planting methods and care of stock shall be governed by good planting practices. If the operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, the operator may defer planting until planting stock is available to plant such land as originally planned, or may select an alternate method of reclamation.

(l) The operator shall construct fire lanes or access roads when necessary through the area to be planted. These lanes or roads shall be available for use by the planting crews and shall serve as a means of access for supervision and inspection of the planting work.

(m) On lands owned by the operator, the operator may permit the public to use the same for recreational purposes, in accordance with the limited landowner liability law contained in article 41 of title 33, C.R.S., except in areas where such use is found by the operator to be hazardous or objectionable.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to the satisfaction of the board to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The legume seed shall be properly inoculated in all cases. The area may be seeded either by hand or power or by the aerial method. The species of grasses and legumes and the rates of seeding to be used per acre shall be determined primarily by recommendations from the agricultural experiment stations established pursuant to article 33 of title 23, C.R.S., and experienced reclamation personnel of the operator, after considering other research or successful experience with range seeding. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local conservation district, if any, shall determine when grazing may start.

(o) If the operator's choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization, and seeding or planting rates shall be governed by general agricultural and horticultural practices, except where research or experience in such operations differs with these practices.

(p) If the operator's choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground

cover for wildlife, the basic minimum requirements necessary for such reclamation shall be agreed upon by the operator and the board.

(q) All reclamation provided for in this section shall be carried to completion by the operator with all reasonable diligence and shall be conducted concurrently with mining operations to the extent practicable, taking into consideration the mine plan, mine safety, economics, the availability of equipment and material, and other site-specific conditions relevant and unique to the affected land and to the postmining land use. Upon termination of the entire mining operation and in accordance with the reclamation plan, each phase of final reclamation shall be completed within five years after the date on which the operator advises the board that such phase has commenced, unless such period is extended by the board pursuant to section 34-32-112 (7); except that:

(I) No planting of any kind shall be required to be made on any affected land being used or proposed to be used by the operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse, or proposed for future mining, or within depressed haulage roads or final cuts while such roads or final cuts are being used or made, or where permanent pools or lakes have been formed.

(II) No planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures. Where natural weathering and leaching of any of such affected land, over a period of ten years after commencement of reclamation, fails to remove the toxic and physical characteristics inhibitory to plant growth or if, at any time within such ten-year period, the board determines that any of such affected land is, and during the remainder of said ten-year period will be, unplantable, the operator's obligations under the provisions of this article with respect to such affected land may, with the approval of the board, be discharged by reclamation of an equal number of acres of land previously mined and owned by the operator not otherwise subject to reclamation under this article.

(III) (A) With the approval of the board and the owner of the land to be reclaimed, the operator may substitute land previously mined and owned by the operator not otherwise subject to reclamation under this article or, in the alternative, with the approval of the board and the owner of the land, reclamation of an equal number of acres of any lands previously mined but not owned by the operator if the operator has not previously abandoned unreclaimed mining lands. The board also has authority to grant, in the alternative, the reclamation of lesser or greater acreage so long as the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If any area is so substituted, the operator shall submit a map of the substituted area, which map shall conform to all of the requirements with respect to other maps required by this article. Upon completion of reclamation of the substituted land, the operator shall be relieved of all obligations under this article with respect to the land for which substitution has been permitted.

(B) Sub-subparagraph (A) of this subparagraph (III) shall not apply to uranium or in situ leach mining.

(IV) Reclamation may be completed in phases, and the five-year period may be applied separately to each phase as it is commenced during the life of the mine.

(r) If affected land is owned by a legal entity other than any local, state, or federal entity, any buildings or any structures having significant historical value placed thereon during mining operations which are conducted in accordance with paragraph (j) of this subsection (7) may remain on the affected land at the option of the operator and landowner.

(8) All uranium extraction operations using in situ leach mining or recovery methods, including any injection of any chemicals designed to mobilize uranium resources, shall reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization, or in the statewide radioactive materials standards or tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission, to either of the following:

(a) Premining baseline water quality or better as established by the baseline site characterization conducted pursuant to section 34-32-112.5 (5); or

(b) That quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission. In establishing, designing, and implementing a groundwater reclamation plan, the mine operator shall use best available technology.

(9) Operators of in situ leach mining operations shall take all necessary steps to prevent and remediate any degradation of preexisting groundwater uses during the prospecting, development, extraction, and reclamation phases of the operation.

Source: **L. 76:** Entire article R&RE, p. 739, § 1, effective July 1. **L. 79:** (1)(a) amended, p. 1252, § 3, effective May 25. **L. 81:** (1)(a) amended, p. 1678, § 3, effective April 30. **L. 88:** Entire section R&RE, p. 1210, § 11, effective July 1. **L. 89:** (7)(g) amended, p. 1426, § 7, effective July 15. **L. 91:** IP(7)(q) amended, p. 1419, § 1, effective May 6; (4) amended, p. 1073, § 54, effective July 1; (4) to (6) amended, p. 1435, § 9, effective July 1. **L. 92:** (7)(k) amended, p. 1942, § 41, effective July 1. **L. 2002:** (7)(j) and (7)(n) amended, p. 518, § 15, effective July 1. **L. 2008:** IP(7)(q) and (7)(q)(III) amended and (8) and (9) added, p. 940, § 7, effective May 20.

Editor's note: This section is similar to former § 34-32-111 as it existed prior to 1976.

Cross references: For the legislative declaration contained in the 1989 act amending subsection (7)(g), see section 1 of chapter 314, Session Laws of Colorado 1989.

ANNOTATION

Law reviews. For article, "When Worlds Collide — The Gravel Pit Evaporation Conflict", see 18 Colo. Law. 237 (1989).

Applied in C & M Sand & Gravel v. Bd. of County Comm'rs, 673 P.2d 1013 (Colo. App. 1983).

34-32-116.5. Environmental protection plan - designated mining operation - rules.

(1) (a) An environmental protection plan shall be required for all designated mining operations.

(b) All nondesignated mining operations are exempt from this section.

(2) Once adopted, the provisions of an environmental protection plan shall be enforceable by the board and by the office to the same extent as any other permit provision or condition.

(3) (a) The board shall promulgate rules pursuant to section 34-32-109 (5) to require a holder of an existing permit for a designated mining operation to submit a proposed environmental protection plan for approval by the office or board.

(b) The plan and fees due pursuant to this subsection (3) shall be due by the date established by the board by rule.

(4) (a) If an existing permit contains the necessary elements of an environmental protection plan, the office or board may deem the existing permit to be adequate to comply with the environmental protection plan.

(b) For any environmental protection plan submitted for an existing operation, the office shall determine whether the proposed environmental protection plan shall be considered a technical revision or an amendment, as defined by rule, or that no modification to the existing permit is necessary.

(5) The board shall promulgate rules governing the form, content, and requirements of an environmental protection plan for any designated mining operation. In promulgating such rules, the board shall consider the economic reasonableness, the technical feasibility, and the level or degree of environmental concerns, as applicable.

(6) All applicants for new permits shall contact the division of parks and wildlife for appropriate wildlife protection recommendations which shall be reviewed as part of the

application process. If protecting wildlife is determined to be necessary by the board, the office may incorporate such wildlife protection recommendations into the new permit as a condition for such permit.

Source: L. 93: Entire section added, p. 1183, § 9, effective July 1. **L. 2007:** (3)(b) amended, p. 2047, § 89, effective June 1.

34-32-117. Warranties of performance - warranties of financial responsibility - release of warranties - applicability. (1) No permit may be issued under this article until the board receives performance and financial warranties as described in subsections (2), (3), and (4) of this section.

(2) A "performance warranty" shall consist of a written promise to the board, by the operator, to comply with all requirements of this article. Performance warranties shall be in such form as the board may prescribe. Whenever two or more persons or entities are named as operators in a single permit, the operators may limit the scope of their individual performance warranties so long as their warranties, in the aggregate, warrant performance of all requirements of this article.

(3) (a) A "financial warranty" shall consist of a written promise, to the board, to be responsible for reclamation costs up to the amount specified by the board pursuant to subsection (4) of this section, together with proof of financial responsibility. Financial warranties may be provided by the operator, by any third party, or by any combination of persons or entities and shall be in such form as the board may prescribe.

(b) The board may accept interests in real and personal property as financial warranties to the extent of a specified percentage of the estimated value of any such property. Any person offering such financial warranty shall submit information necessary to show clear title to and the value of such property.

(c) The board may refuse to accept any form of financial warranty if:

(I) The value of the financial warranty offered is dependent upon the success, profitability, or continued operation of the mine; or

(II) The board determines that the financial warranty offered cannot reasonably be converted to cash within one hundred eighty days of forfeiture.

(d) For nondesignated mining operations:

(I) This subsection (3) shall be applicable July 1, 1993, to deeds of trust which are used as collateral for new financial warranties completed on or after such date;

(II) This subsection (3) shall be applicable on January 1, 1996, to:

(A) Deeds of trust existing as of July 1, 1993, and subsequent updates of these same deeds of trust used as collateral for financial warranties; and

(B) Any financial warranty completed before July 1, 1993, if the value of any such financial warranty includes any mineral value or if mineral value is used to update any such financial warranty. The value of any financial warranty described in this sub-subparagraph (B) shall include mineral value for the life of the warranty.

(e) Any instrument offered as a financial warranty pursuant to this subsection (3) shall provide that the board may recover any necessary costs, including attorney fees, it incurs in foreclosing on or realizing any collateral used to secure such financial warranty if such financial warranty is forfeited.

(f) Proof of financial responsibility may consist of any one or more of the following subject to approval by the board:

(I) A surety bond issued by a corporate surety authorized to do business in this state;

(II) A letter of credit issued by a bank authorized to do business in the United States;

(III) A certificate of deposit;

(IV) A deed of trust or security agreement encumbering real or personal property and creating a first lien in favor of the state;

(V) Assurance, in such form as the board may require, that:

(A) Upon commencement of production, the operator will establish an individual reclamation fund, to be held by an independent trustee for the board, upon such terms and conditions as the board may prescribe, which trust fund shall be funded by periodic cash

payments representing such fraction of receipts as will, in the opinion of the board, provide assurance that funds will be available for reclamation;

(B) Prior to issuance of a permit, the operator will provide another form of financial warranty as described in this paragraph (f). As the reclamation fund increases in value, the other form of financial warranty may be decreased in value so long as the sum of financial warranties is that amount specified by subsection (4) of this section.

(C) Project-related fixtures and equipment (excluding rolling stock) owned or to be owned by the financial warrantor within the permit area will have a salvage value at least equal to the amount of the financial warranty, or the appropriate portion thereof;

(D) Existing liens and encumbrances applicable to said fixtures and equipment, other than liens in favor of the United States or this state, any other state, and any political subdivisions, will be subordinated to the lien described in section 34-32-118 (4) (b); and

(E) Said fixtures and equipment will be maintained in good operating condition and will not be removed from the permit area without the prior consent of the board;

(VI) A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that:

(A) The financial warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;

(B) Said obligations enjoy a rating of 'A' or better; and

(C) At the close of the financial warrantor's most recent fiscal year, his or her net worth was equal to or greater than two times the amount of all financial warranties;

(VII) A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that as of the close of said year:

(A) The financial warrantor's net worth was at least ten million dollars and was equal to or greater than two times the amount of all financial warranties;

(B) The financial warrantor's tangible fixed assets in the United States were worth at least twenty million dollars;

(C) The financial warrantor's total liabilities-to-net-worth ratio was not more than two to one; and

(D) The financial warrantor's net income, excluding nonrecurring items, was positive. Nonrecurring items which affect net income should be stated in order to determine if they materially affect self-bonding capacity.

(VIII) Proof that the operator is a department or division of state government or a unit of county or municipal government.

(g) Any proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with paragraphs (a), (b), and (c) of subsection (4) of this section.

(4) (a) The board shall prescribe the amount and duration of financial warranties, taking into account the nature, extent, and duration of the proposed mining operation and the magnitude, type, and estimated cost of planned reclamation.

(b) (I) In any single year during the life of a permit, the amount of required financial warranties shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. For the purpose of this paragraph (b), reclamation costs shall be computed with reference to current reclamation costs. The amount of the financial warranty shall be sufficient to assure the completion of reclamation of affected lands if the office has to complete such reclamation due to forfeiture. Such financial warranty shall include an additional amount equal to five percent of the amount of the financial warranty to defray the administrative costs incurred by the office in conducting the reclamation.

(II) The office and the board shall take reasonable measures to assure the continued adequacy of any financial warranty.

(c) (I) The board may:

(A) From time to time for good cause shown, increase or decrease the amount and duration of required financial warranties;

(B) By rule or permit condition require proof of value on a periodic basis of all or any group of warranties held by the board; and

(C) By rule or permit condition limit certain types of warranties to specific purposes only or require a designated percentage of the total bond be held in easily valued and convertible instruments.

(II) A financial warrantor shall have sixty days after the date of notice of any such adjustment to fulfill all new requirements.

(5) (a) An operator may file a written notice of completion with the office whenever such operator believes such operator has completed any or all requirements of this article with respect to any or all of such operator's affected lands except for any such lands in designated mining operations. The office shall, within sixty days after receiving said notice, or as soon thereafter as weather conditions permit, inspect lands and reclamation described in the notice to determine if the operator has complied with all applicable requirements.

(b) If the board or office finds that the operator has successfully complied with any or all requirements of this article, it shall release all performance and financial warranties applicable to said requirements. Releases shall be in writing and shall be delivered to the owner or operator promptly after the date of such finding.

(c) If the board or office finds that the operator has not complied with applicable requirements of this article, it shall so advise the operator not more than sixty days after the date of the inspection.

(d) If the office fails to conduct an inspection within the time specified in paragraph (a) of this subsection (5) or fails to advise the operator of deficiencies within the time specified in paragraph (c) of this subsection (5), then all financial warranties applicable to reclamation described in the notice shall be deemed released as a matter of law.

(5.5) (a) (I) An operator may file a written notice of completion with the office upon completion of all requirements of this article with respect to any or all of such operator's affected lands at a designated mining operation.

(II) The office shall inspect lands and reclamation described in any such written notice to determine if the operator has complied with all applicable requirements within sixty days after receiving such notice or as soon thereafter as weather conditions permit.

(b) If the board or office finds that the operator has complied with all requirements of this article, it shall promptly deliver a written release of any performance and financial warranties, or portion thereof, to the owner or operator according to the following schedule:

(I) An appropriate amount of the financial warranty for the applicable permit area shall be released when the operator completes the requirements of the approved reclamation plan; and

(II) The performance warranty and the remaining portion of the financial warranty shall be released on such schedule as the board may prescribe; except that all remaining portions of the warranty shall be released at the end of the period described in paragraph (e) of this subsection (5.5) if, at that time, the affected land has been reclaimed for a beneficial use and is in compliance with all applicable performance standards.

(c) (I) If the board or office finds that the operator has not complied with applicable requirements of this article, it shall so advise the operator not more than sixty days after the date of an inspection conducted pursuant to paragraph (a) or (e) of this subsection (5.5).

(II) If the operator is not entitled to a release of the financial warranty, or portion thereof, pursuant to paragraph (b) of this subsection (5.5), the board or office may specify a reclamation schedule and adjust the amount of the financial warranty pursuant to paragraph (c) of subsection (4) of this section.

(d) If the office fails to conduct an inspection within the time specified in paragraph (a) or (e) of this subsection (5.5) or fails to advise the operator of any deficiencies within the time specified in paragraph (c) of this subsection (5.5), then that portion of the financial warranties applicable to reclamation described in the notice or request for release shall be deemed released as a matter of law.

(e) At such time as the board or office may prescribe, but no more than five years after the release of a portion of the financial warranty as described in subparagraph (I) of paragraph (b) of this subsection (5.5), the operator may file a written request for release of the performance warranty and the remaining portion of the financial warranty. The office shall inspect any lands and reclamation described in the request within sixty days after receiving such request or as soon thereafter as weather conditions permit to determine

whether the affected land has been reclaimed for a beneficial use and is in compliance with all applicable performance standards.

(6) (a) Financial warranties shall be maintained in good standing for the entire life of any permit issued under this article. Financial warrantors shall immediately notify the board of any event which may impair their warranties.

(b) Each financial warrantor providing proof of financial responsibility in a form described in subparagraphs (IV) to (VII) of paragraph (f) of subsection (3) or in subsection (8) of this section shall annually cause to be filed with the board a certification by an independent auditor that, as of the close of the financial warrantor's most recent fiscal year, the financial warrantor continued to meet all applicable requirements of said subparagraphs. Financial warrantors who no longer meet said requirements shall instead cause to be filed an alternate form of financial warranty.

(c) Each financial warrantor providing proof of financial responsibility in a form described in subparagraphs (IV) to (VII) of paragraph (f) of subsection (3) or in subsection (8) of this section shall notify the board within sixty days of any net loss incurred in any quarterly period.

(d) Whenever the board receives a notice under paragraph (a) or (c) of this subsection (6), fails to receive a certification or substitute warranty as required by paragraph (b) of this subsection (6), or otherwise has reason to believe that a financial warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

(e) Whenever the board elects to convene a hearing pursuant to this subsection (6), it may hire an independent consultant to provide expert advice at the hearing. The fees of any such consultant shall be paid by the financial warrantor, and no consultant shall be hired until the financial warrantor signs a written fee agreement in such form as the board may prescribe. In the event that a financial warrantor refuses to sign such an agreement, the board may, without hearing, order the financial warrantor to provide an alternate form of financial warranty.

(f) At any hearing held pursuant to this subsection (6), if the board finds that a financial warranty has been materially impaired, it may order the financial warrantor to provide an alternate form of financial warranty.

(g) A financial warrantor shall have ninety days to provide any alternate warranty required under this subsection (6).

(h) All hearings held under this subsection (6) shall comply with all requirements of article 4 of title 24, C.R.S.

(i) (Deleted by amendment, L. 93, p. 1184, § 10, effective July 1, 1993.)

(7) For the purposes of this section:

(a) "Rating of 'A' or better" means that the rating organization has determined that the obligations are at least of an upper-medium grade, meaning that factors giving security to the principal and interest are considered adequate but that elements may be present which suggest the possibility of adverse effects if economic and trade conditions change.

(b) (Deleted by amendment, L. 93, p. 1184, § 10, effective July 1, 1993.)

(8) (a) The board or office may, in its discretion, accept a first priority lien in the amount of the financial warranty prescribed pursuant to subsection (4) of this section on any project-related fixtures and equipment that must remain on-site in order for the reclamation plan to be performed in lieu of including the cost of acquiring and installing such fixtures and equipment.

(b) The board or office may accept a first priority lien on any project-related fixtures and equipment that must be demolished or removed from the site under the reclamation plan. The board or office may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited for such lien does not exceed the cost of demolishing and removing the subject fixtures and equipment or the market value of such fixtures and equipment, whichever is less.

(c) Any fixtures and equipment accepted pursuant to this subsection (8) shall be insured and maintained in good operating condition and shall not be removed from the permit area without the prior consent of the board. Each financial warrantor providing a lien on such equipment and fixtures shall file an annual report with the office in sufficient detail to fully

describe the condition, value, and location of all pledged fixtures and equipment. Such financial warrantor shall not pledge such equipment and fixtures to secure any other obligation and shall immediately notify the office of any other interest that arises in the pledged property.

Source: **L. 76:** Entire article R&RE, p. 742, § 1, effective July 1. **L. 77:** (1)(a), (1)(b), (2), (3), and (6) amended, p. 1562, § 2, effective June 2. **L. 79:** (1)(e) added, p. 1252, § 4, effective May 25. **L. 81:** (1)(e) amended, p. 1678, § 4, effective April 30; entire section R&RE, p. 1670, § 9, effective June 19. **L. 91:** (3)(a)(IX) amended, p. 757, § 33, effective April 4. **L. 93:** Entire section amended, p. 1184, § 10, effective July 1.

Editor's note: This section is similar to former § 34-32-112 as it existed prior to 1976.

34-32-118. Forfeiture of financial warranties. (1) A financial warranty shall be subject to forfeiture whenever the board shall determine that any one or more of the following circumstances exist:

(a) The operator has violated a cease-and-desist order entered pursuant to section 34-32-124 and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to have done so has elapsed; or

(b) The operator is in default under his performance warranty and has failed to cure such default although he has been given written notice thereof and has had ample time to cure such default; or

(c) The financial warrantor has failed to maintain his financial warranty in good standing as required by section 34-32-117; or

(d) The financial warrantor no longer has the financial ability to carry out his obligations under this article.

(2) Whenever the board, based on information and belief, has reason to believe that a financial warranty is subject to forfeiture, the board shall so notify the operator and all financial warrantors. The board shall afford the operator and all financial warrantors the right to appear before the board at a hearing to be held not less than thirty days after the parties' receipt of said notice. Any such hearing shall be held in accordance with the provisions of article 4 of title 24, C.R.S.

(3) (a) At any such hearing, the board shall be empowered to:

(I) Withdraw or modify any determination that the financial warranty is subject to forfeiture;

(II) Settle or compromise the determination; or

(III) Confirm its determination that the financial warranty should be forfeited.

(b) Upon finding that a financial warranty should be forfeited, the board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected financial warrantors to immediately deliver to the board all amounts warranted by applicable financial warranties.

(4) (a) The board, upon issuing any order pursuant to subsection (3) of this section, may request the attorney general to institute proceedings to secure or recover amounts warranted by forfeited financial warranties. The attorney general shall have the power, inter alia, to:

(I) Foreclose upon any real and personal property encumbered for the benefit of the state;

(II) Collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the board;

(III) Dispose of pledged property.

(b) The amount of any forfeited financial warranty shall be a lien in favor of this state upon any project-related fixtures or equipment offered as proof of financial responsibility pursuant to section 34-32-117 (3) (f) (V).

(c) Said lien shall have priority over all other liens and encumbrances irrespective of the date of recordation, except liens of record on June 19, 1981, and liens of the United States, the state, and political subdivisions thereof for unpaid taxes, and shall attach and be deemed perfected as of the date the board approves issuance of the operator's permit.

(5) Funds recovered by the attorney general in proceedings brought pursuant to subsection (4) of this section shall be held in the account described in section 34-32-122 and shall be used to reclaim lands covered by the forfeited warranties; except that five percent of the amount of the financial warranty shall be deposited in the mined land reclamation fund, created in section 34-32-127, to cover the administrative costs incurred by the office in performing reclamation. The board shall have a right of entry to reclaim said lands. Upon completion of such reclamation, the board shall present to the financial warrantor a full accounting and shall refund all unspent moneys.

(6) Defaulting operators shall remain liable for the actual cost of reclaiming affected lands, less any amounts expended by the board pursuant to subsection (5) of this section, notwithstanding any discharge of applicable financial warranties.

(7) Notwithstanding any provision of this section to the contrary, a corporate surety may elect to reclaim affected lands in accordance with an approved plan in lieu of forfeiting a bond penalty.

Source: **L. 76:** Entire article R&RE, p. 743, § 1, effective July 1. **L. 77:** Entire section amended, p. 1564, § 3, effective June 2. **L. 81:** Entire section R&RE, p. 1674, § 10, effective June 19. **L. 93:** (5) amended, p. 1193, § 11, effective July 1.

Editor's note: This section is similar to former § 34-32-113 as it existed prior to 1976.

34-32-119. Operators - succession. Where one operator succeeds another at any uncompleted operation, the board shall release the first operator from all liability as to that particular reclamation operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes, as part of his obligation under this article, all liability for the reclamation of the affected land, and his obligation is covered by appropriate performance and financial warranties as to such affected land. Where one operator succeeds another, a fee as specified in section 34-32-127 (2) shall be paid to the board before the first operator is released from liability and before any financial warranties are released.

Source: **L. 76:** Entire article R&RE, p. 743, § 1, effective July 1. **L. 81:** Entire section amended, p. 1676, § 11, effective June 19. **L. 91:** Entire section amended, p. 1435, § 10, effective July 1.

Editor's note: This section is similar to former § 34-32-114 as it existed prior to 1976.

34-32-120. Permit refused defaulting operator. No permit for new mining operations shall be granted to any operator who is currently found to be in violation of the provisions of this article with respect to any operation in this state.

Source: **L. 76:** Entire article R&RE, p. 744, § 1, effective July 1.

Editor's note: This section is similar to former § 34-32-115 as it existed prior to 1976.

34-32-121. Entry upon lands for inspection. The board, the office, or their authorized representatives may enter upon the lands of the operator at all reasonable times for the purpose of inspection to determine whether the provisions of this article have been complied with.

Source: **L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 92:** Entire section amended, p. 1943, § 42, effective July 1.

Editor's note: This section is similar to former § 34-32-116 as it existed prior to 1976.

34-32-121.5. Reporting certain conditions. Any person engaged in a mining operation shall notify the office of any failure or imminent failure as soon as reasonably practicable after such person has knowledge of such condition, but for in situ leach mining operations in no event more than twenty-four hours after the discovery of such failure or an imminent failure, of: Any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; any structure for in situ leach mining operations designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater; any structure used in connection with in situ leach mining designed to detect, prevent, minimize, or mitigate adverse impacts on human health, wildlife, or the environment; or any environmental protection facility designed to contain or control chemicals or waste that are acid- or toxic-forming, as identified in the permit.

Source: L. 93: Entire section added, p. 1193, § 12, effective July 1. L. 2008: Entire section amended, p. 941, § 8, effective May 20.

34-32-122. Fees, civil penalties, and forfeitures - deposit - emergency response cash fund - created. (1) (a) All fees and assessments collected pursuant to this article and five percent of the proceeds of any financial warranty forfeited pursuant to section 34-32-118 shall be deposited in the mined land reclamation fund for administrative costs associated with reclaiming sites for which the financial warranty has been revoked. All civil penalties collected under the provisions of this article shall be deposited in the general fund. Ninety-five percent of the proceeds of all financial warranties forfeited under the provisions of section 34-32-118 shall be deposited in a special account in the general fund established by the board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such financial warranties have been forfeited.

(b) Repealed.

(2) Any applicant that desires to utilize the self-insurance provisions listed in section 34-32-117 (3) (f) (IV) to (3) (f) (VII) or (8) shall pay an annual fee to the office sufficient to defray the actual cost to the office of establishing and reviewing the financial warranty of the applicant. These funds are hereby annually made available to the office which shall utilize outside financial and legal services for this purpose.

(3) (a) (I) The board is hereby authorized to accept grants and donations for the purposes of responding to emergencies as set forth in this subsection (3). All grants and donations accepted pursuant to this subsection (3) shall be transmitted to the state treasurer who shall credit the same to the emergency response cash fund, which fund is hereby created.

(II) The emergency response cash fund shall be available for use by the executive director to conduct emergency responses or to perform emergency reclamation activities at mining operations subject to this article.

(III) An amount equal to the civil penalties collected pursuant to section 34-32-123 shall be subject to appropriation by the general assembly for purposes of responding to emergencies as set forth in this subsection (3), if the general assembly determines that funds in the emergency response cash fund are inadequate to adequately respond to an emergency.

(IV) Notwithstanding any provision of this subsection (3) to the contrary, on July 1, 2003, the state treasurer shall deduct four hundred eighty-six thousand six hundred thirteen dollars from the emergency response cash fund and transfer such sum to the general fund.

(b) "Emergency" means any event to which the board is authorized to respond pursuant to section 34-32-124.5.

(c) (I) The executive director is authorized to bring an action in the district court against any owner, operator, or permit holder whose actions the executive director reasonably believes necessitated the emergency response or caused the emergency. The purpose of any such action shall be to recover the funds expended from the emergency response cash fund from such owner, operator, or permit holder.

(II) The burden of proof in any action brought pursuant to this paragraph (c) shall be on the state which shall demonstrate with competent evidence that:

(A) An emergency existed;

(B) The parties named necessitated the emergency response or caused the emergency; and

(C) The response was reasonable under the circumstances known or reasonably thought to exist by the state.

(III) Nothing in this paragraph (c) shall be construed to prevent a named party from challenging the adequacy of the evidence or from presenting contrary evidence.

(IV) If there is a conflict regarding costs incurred by the office pursuant to this subsection (3), the state shall bear the burden of proof.

(d) The court may apportion responsibility for any award of reasonable emergency response costs to any party or parties in any proportion as may be equitable under the circumstances; except that liability shall be several and individual and not joint and collective.

(4) If the board makes findings pursuant to section 34-32-124.5 which justify an emergency response, it may:

(a) Establish an emergency response team;

(b) Enter the property and take remedial action necessary to bring the operation into compliance with the permit or remove an imminent threat to the public health and safety;

(c) Issue a written cease-and-desist order requiring any party to immediately discontinue an activity; and

(d) Apply to the district court for the district in which the activity is occurring for a temporary restraining order, temporary injunction, or permanent injunction.

(5) Nothing in this section shall be construed to qualify the authority of the executive director or to prevent the executive director from taking action pursuant to subsection (3) of this section.

Source: **L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 80:** Entire section amended, p. 690, § 1, effective April 1. **L. 81:** Entire section amended, p. 1676, § 12, effective June 19. **L. 87:** (1) amended, p. 1841, § 2, effective August 27. **L. 88:** (1)(a) amended and (1)(b) repealed, pp. 1214, 1215, §§ 12, 16, effective July 1. **L. 91:** (1)(a) amended, p. 1435, § 11, effective July 1. **L. 92:** (2) amended, p. 1943, § 43, effective July 1. **L. 93:** Entire section amended, p. 1193, § 13, effective July 1. **L. 2003:** (3)(a)(IV) added, p. 1544, § 6, effective May 1.

Editor's note: This section is similar to former § 34-32-118 as it existed prior to 1976.

34-32-123. Operating without a permit - penalty. (1) Whenever an operator or prospector fails to obtain a valid permit or file a notice of intent under the provisions of this article, the board or the office may issue an immediate cease-and-desist order. Concurrently with the issuance of such an order, the board or the office may seek a restraining order or injunction pursuant to section 34-32-124 (3).

(2) Any operator who operates without a permit shall be subject to a civil penalty of not less than one thousand dollars per day nor more than five thousand dollars per day for each day the land has been affected. Such penalties shall be assessed for a period not to exceed sixty days. Operators who mine substantial acreage beyond their approved permit boundary may be found to be operating without a permit.

(3) Any operator or prospector who operates without filing a notice of intent or a permit under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred dollars per day for each day the land has been affected. Such penalties shall be assessed for not less than one day and not more than sixty days. Operators operating under a permit approved pursuant to section 34-32-110 who affect more than two acres may be found to be operating without a permit.

Source: **L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 88:** (2) amended and (3) added, p. 1214, § 13, effective July 1. **L. 91:** (1) amended, p. 1422, § 5, effective May 6. **L. 92:** (1) amended, p. 1943, § 44, effective July 1.

Editor's note: This section is similar to former §§ 34-32-113 and 34-32-117 as they existed prior to 1976.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

34-32-124. Failure to comply with conditions of order, permit, or regulation.

(1) Whenever the board or the office has reason to believe that there has occurred a violation of an order, permit, notice of intent, or regulation issued under the authority of this article, written notice shall be given to the operator or prospector of the alleged violation. Such notice shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and may include the nature of any corrective action proposed to be required.

(2) (a) If the board determines that there exists any violation of any provisions of this article or of any notice, permit, or regulation issued or promulgated under authority of this article, the board may issue a cease-and-desist order. Such order shall set forth the provisions alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated and may include the nature of any corrective action proposed to be required. Such order shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the violator's agent for service of process.

(b) Any costs incurred by the board or office in carrying out corrective action pursuant to this section may be assessed against the violator. The board may also assess additional costs against the violator for any inordinate expenditure of board or office resources necessitated by the administration of such corrective action.

(3) In the event any operator fails to comply with a cease-and-desist order issued by the board, the board or the office may request the attorney general to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order. Suits under this section shall be brought in the district court where the alleged violation occurs. If the board or the office determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

(4) The board or the office may require the alleged violator to appear before the board no sooner than twenty days after the issuance of such cease-and-desist order; except that an earlier date for hearing may be requested by the alleged violator.

(5) If a hearing is held pursuant to the provisions of this section, it shall be open to the public and conducted in accordance with the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S. The board shall permit all parties to respond to the notice served, to present evidence and arguments on all issues, and to conduct cross-examination required for a full disclosure of the facts.

(6) (a) Upon a determination, after hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke the pertinent permit.

(b) If the board suspends or revokes the permit of an operator, the operator may continue mining operations only for the purpose of bringing the mining operation into satisfactory compliance with the provisions of the operator's permit. Once such operations are completed to the satisfaction of the board, the board shall reinstate the permit of the operator.

(7) Any person who violates any provision of any permit issued under this article shall be subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day for each day during which such violation occurs; except that any operator who operates under a permit issued under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred dollars per day for each day during which such violation occurs.

Source: **L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 91:** (1), (3), and (4) amended, p. 1422, § 6, effective May 6. **L. 92:** (1), (3), and (4) amended, p. 1943, § 45, effective July 1. **L. 93:** (2) amended, p. 1195, § 14, effective July 1.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

34-32-124.5. Emergencies endangering public health or environment. (1) Following an investigation, an emergency response shall be justified pursuant to section 34-32-122 (3), if the board or office determines that any person is:

(a) Engaging in any activity not sanctioned by, or which constitutes a material violation of, a permit for a mining operation, if such activity constitutes an immediate, undue, and unwarranted risk of serious harm to persons or property or to the environment; or

(b) An operator with a permit who is failing or refusing to respond to a board order requiring corrective actions for:

(I) Any failure or imminent failure of any impoundment, embankment, or slope identified in such permit; or

(II) Any environmental protection facility or measure identified in the permit which is designed for control or containment of chemicals or waste which are toxic, toxic-forming, or acid; or

(III) Any other measure identified in such permit or as provided for in this article or any rule promulgated pursuant to this article, which is intended to protect human health or property or the environment.

Source: **L. 93:** Entire section added, p. 1196, § 15, effective July 1.

34-32-125. Conflict with "Colorado Surface Coal Mining Reclamation Act". Nothing in this article shall apply to any mining operation regarding reclamation of mined land which is regulated by the board or office pursuant to article 33 of this title.

Source: **L. 79:** Entire section added, p. 1306, § 8, effective July 1. **L. 92:** Entire section amended, p. 1944, § 46, effective July 1.

34-32-126. Fees - mined land reclamation cash fund. (Repealed)

Source: **L. 87:** Entire section added, p. 1841, § 1, effective August 27. **L. 88:** Entire section repealed, p. 1215, § 16, effective July 1.

34-32-127. Mined land reclamation fund - created - fees - fee adjustments - rules. (1) (a) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mined land reclamation fund, which fund is hereby created. The moneys in the mined land reclamation fund shall consist of fees collected by the office pursuant to this article. All interest derived from the investment of moneys in the mined land reclamation fund shall be credited to the fund. Any balance remaining in the fund at the end of any fiscal year shall remain in the fund and shall be subject to appropriation by the general assembly for the purposes for which the fund was created.

(b) The general assembly shall make annual appropriations from the mined land reclamation fund for the direct and indirect costs of the office incurred in the performance of its duties under this article. Pursuant to section 34-32-102 (3), the mined land reclamation fund shall be used for, and shall be limited to, the actual costs of processing permits and for conducting annual reviews and inspections.

(2) (a) Fees for fiscal year 2007-08 and for each subsequent year of operation shall be collected by the office for operations according to the following schedule:

(I) Applications pursuant to:	
(A) Section 34-32-110 (1)	\$ 288
(B) Section 34-32-110 (2)	\$ 1,006
(C) Section 34-32-110 (7)	\$ 1,725
(C.5) Section 34-32-110 relating to reclamation permit amendments	\$ 661
(D) Repealed.	
(E) Section 34-32-112, except for applications relating to the mining operations specified in sub-subparagraphs (F) and (G) of this subparagraph (I)	\$ 2,156
(F) Section 34-32-112 relating to quarries	\$ 2,674
(G) Section 34-32-112 relating to mining operations, other than designated mining operations, where chemical or thermal processing is used for milling of an ore .	\$ 3,565
(H) Section 34-32-112 (8) relating to reclamation permit amendments, except as specified in sub-subparagraph (N) of this subparagraph (I)	\$ 1,783
(I) Section 34-32-112 (8) relating to revisions to permits other than amendments .	\$ 173
(J) Section 34-32-112 (8) relating to temporary cessations of operations	\$ 115
(K) Section 34-32-113	\$ 86
(L) Section 34-32-119	\$ 115
(M) Section 34-32-112 relating to designated mining operations: The board may designate an application fee by rule based upon the estimated cost to the office for processing certification and administrative review of such permits that shall not be less than \$1,000 or more than \$10,350 for such operation, except as specified in sub-subparagraph (N) of this subparagraph (I).	

(N) Oil shale application, amendment, and revision to a permit other than an amendment fee: If the costs to review and process an oil shale application, amendment, or revision to a permit other than an amendment exceeds twice the value of the fee for a new application, amendment, or revision to a permit other than an amendment pursuant to sub-subparagraph (H) or (M) of this subparagraph (I), the applicant shall pay the additional costs. The costs shall include those of the division, another division of the department involved in the review, and any consultants or other nongovernmental agents that have specific expertise on the issue in question acting at the request of the division in the review of the oil shale permit application, amendment, or revision to a permit other than an amendment. The division shall inform the applicant that the actual fee may exceed twice the value of the listed fee and shall provide the applicant with an estimate of the actual charges for the review of the application, amendment, or revision to a permit other than an amendment within ten days after receipt of the application. An appeal of this estimate shall be made to the board within ten days after the applicant's receipt of the estimate.

(O) In situ uranium application, amendment, and revision to a permit other than an amendment fee: If the costs to review and process an in situ uranium application, amendment, or revision to a permit other than an amendment exceeds twice the value of the fee for a new application, amendment, or revision to a permit other than an amendment pursuant to sub-subparagraph (H) or (M) of this subparagraph (I), the applicant shall pay the additional costs. The costs shall include those of the division, another division of the department involved in the review, and any consultants or other nongovernmental agents that have specific expertise on the issue in question acting at the request of the division in the review of the in situ uranium permit application, amendment, or revision to a permit other than an amendment. The division shall inform the applicant that the actual fee may exceed twice the value of the listed fee and shall provide the applicant with an estimate of the actual charges for the review of the application, amendment, or revision to a permit other than an amendment within ten days after receipt of the application. An appeal of this estimate shall be made to the board within ten days after the applicant's receipt of the estimate.

(II) and (III) (Deleted by amendment, L. 95, p. 1189, § 5, effective July 1, 1995.)

(IV) Annual fees for fiscal year 2007-08 and for each subsequent year for operations pursuant to:

(A) Section 34-32-110 (1) (excluding designated mining operations)	\$ 86
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- (B) Section 34-32-110 (2) (excluding designated mining operations)\$ 259
- (C) Repealed.
- (D) Section 34-32-112 (excluding designated mining operations)\$ 633
- (E) Section 34-32-112 (for designated mining operations)\$ 1,150
- (F) Section 34-32-110 (for designated mining operations)\$ 518
- (G) Section 34-32-113\$ 86
- (V) Fees to the public for services such as copying, making copies of and mailing board minutes, computer printouts, compilation reports, or other services shall be the same as the cost to the office for providing such services.

(b) (Deleted by amendment, L. 95, p. 1189, § 5, effective July 1, 1995.)

(c) Repealed.

(3) Notwithstanding the amount specified for any fee in subsection (2) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: **L. 91:** Entire section added, p. 1429, § 1, effective July 1. **L. 92:** (1), IP(2)(a), (2)(a)(V), and (2)(b) amended, p. 1944, § 47, effective July 1. **L. 93:** (2) amended, p. 1196, § 16, effective July 1. **L. 95:** (2)(a)(II), (2)(a)(III), (2)(a)(V), and (2)(b) amended, p. 1189, § 5, effective July 1. **L. 96:** (2)(a)(I)(D), (2)(a)(IV)(C), and (2)(c) repealed, p. 179, § 4, effective April 18. **L. 98:** (3) added, p. 1340, § 61, effective June 1. **L. 2007:** (2)(a) amended, p. 958, § 1, effective July 1. **L. 2008:** (2)(a)(I)(C.5) and (2)(a)(I)(O) added and (2)(a)(I)(N) amended, pp. 1652, 1653, §§ 1, 2, effective August 5.

ARTICLE 32.5

Colorado Land Reclamation Act for the Extraction of Construction Materials

34-32.5-101.	Short title.	34-32.5-116.	Duties of operators - reclamation plans.
34-32.5-102.	Legislative declaration.	34-32.5-117.	Warranties of performance - warranties of financial responsibility - release of warranties.
34-32.5-103.	Definitions.	34-32.5-118.	Forfeiture of financial warranties.
34-32.5-104.	Administration.	34-32.5-119.	Operators - succession.
34-32.5-105.	Office of mined land reclamation - mined land reclamation board.	34-32.5-120.	Permit refused - operator in default.
34-32.5-106.	Duties of board.	34-32.5-121.	Entry upon lands for inspection - reporting certain conditions.
34-32.5-107.	Powers of board.	34-32.5-122.	Fees, civil penalties, and forfeitures - deposit.
34-32.5-108.	Rules.	34-32.5-123.	Operating without a permit - penalty.
34-32.5-109.	Reclamation permit required - existing permits.	34-32.5-124.	Failure to comply with conditions of order, permit, or regulation.
34-32.5-110.	Existing limited impact operations - expedited process.	34-32.5-125.	Mined land reclamation fund - fees.
34-32.5-111.	Special permits - fifteen-calendar-day processing.		
34-32.5-112.	Application for reclamation permit - changes in permits - fees - notice.		
34-32.5-113.	Exploration notice - reclamation requirements.		
34-32.5-114.	Protests - petition for hearing.		
34-32.5-115.	Action by board - appeals.		

34-32.5-101. Short title. This article shall be known and may be cited as the “Colorado Land Reclamation Act for the Extraction of Construction Materials”.

Source: L. 95: Entire article added, p. 1155, § 1, effective July 1.

ANNOTATION

Law reviews. For article, “Build It and They Will Come for Gravel”, see 31 Colo. Law. 67 (March 2002).

34-32.5-102. Legislative declaration. (1) The general assembly hereby declares that the extraction of construction materials for government and private enterprise and the reclamation of land affected by such extraction are necessary and proper activities that are compatible. It is the intent of the general assembly to foster and encourage the development of an economically sound and stable extraction materials industry and to encourage the orderly development of the state’s natural resources while requiring those persons involved in extraction operations to reclaim land affected so that it may be put to a use beneficial to the people of this state. It is the further intent of the general assembly to conserve natural resources, aid in the protection of wildlife and aquatic resources, establish agricultural, recreational, residential, and industrial sites, and protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that a reclamation regulatory program shall be developed under which the economic costs of reclamation measures shall bear a reasonable relationship to the environmental benefits derived from such measures. When considering the requirements of reclamation measures, the mined land reclamation board or the office of mined land reclamation shall determine the economic reasonableness of the action by evaluating the benefits expected to result from the use of such measures. When considering economic reasonableness, the financial condition of an operator shall not be a factor.

(3) The general assembly further finds and declares that:

(a) It is the policy of this state to recognize that extraction operations are conducted by both government and private entities;

(b) All residents of this state benefit from the reclamation of land;

(c) The funding needed to ensure that reclamation is achieved should be borne equitably by the public and private sectors;

(d) The funding for enforcement and other activities conducted for the benefit of the general public should be supported by the general fund; and

(e) It is the policy of this state to allocate resources adequate to accomplish the purposes of this article.

Source: L. 95: Entire article added, p. 1155, § 1, effective July 1.

34-32.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Affected land” means the surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of an operation. Affected lands include, but shall not be limited to, private ways, roads (except those roads excluded by this subsection (1)); land excavations; exploration sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property that result from or are used in such operations are situated. “Affected land” does not include land that has been reclaimed pursuant to an approved plan or otherwise, as may be approved by the board, or off-site roads that were constructed for purposes unrelated to the proposed operation, were in existence before a permit application was filed with the office, and will not be substantially upgraded to support the operation or off-site groundwater monitoring wells.

(1.5) "Aggrieved" means suffering actual loss or injury, or being exposed to potential loss or injury, to legitimate interests. Such interests include, but are not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Construction material" means rock, clay, silt, sand, gravel, limestone, dimension stone, marble, or shale extracted for use in the production of nonmetallic construction products.

(4) "Department" means the department of natural resources.

(5) "Development" means work performed with respect to a construction materials deposit following the exploration required to prove construction materials are in existence in commercial quantities but prior to production activities. Development work includes, but is not limited to, work that must be performed for the purpose of preparing the site for mining, defining further the deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(6) "Director" means the director of the division of reclamation, mining, and safety.

(7) "Division" means the division of reclamation, mining, and safety created in section 34-20-103.

(8) "Executive director" means the executive director of the department of natural resources.

(9) "Exploration" means the act of searching for or investigating a construction materials deposit. "Exploration" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes, and digging pits, cuts, or other works for the purpose of extracting samples prior to the commencement of development or extraction, and the building of roads, access ways, and other facilities related to such work. "Exploration" does not include:

(a) An activity that causes very little or no surface disturbance, such as airborne surveys and photographs, the use of instruments or devices that are hand-carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work that causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration activities; or

(b) Any single activity that results in the disturbance of a single block of land totaling one thousand six hundred square feet or less of the land's surface, not to exceed two such disturbances per acre; except that the cumulative total of such disturbances may not exceed five acres statewide in any exploration operation extending over twenty-four consecutive months.

(10) "Financial warranty" means a warranty of the type described in section 34-32.5-117 (3).

(11) "Life of the mine" means, with respect to a permit granted pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112, a period lasting as long as:

(a) An operator continues to engage in the extraction of construction materials and complies with this article. The life of the mine includes that period of time after the cessation of production that is necessary to complete the reclamation of disturbed lands as required by the board and this article and continues until the board releases the operator, in writing, from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

(b) Construction material reserves are shown by the operator to remain in the operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if such operator files a notice with the board stating the reasons for nonproduction, a plan for the resumption of production, and the measures taken to comply with reclamation and other necessary activities as established by the board to maintain the operation in a nonproducing state. The requirement of a notice of temporary cessation shall not apply to operators who resume operating within one year and have included in their permit applications a statement that the affected lands are to be used for less than one hundred eighty days per year.

(c) Production is resumed within five years after the date production ended, or the operator files a report with the board requesting an extension of the period of temporary cessation of production stating the reasons for the continuation of nonproduction and those factors necessary to, and the plans for, resumption of production. In no case shall a temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.

(d) The board does not take action to declare termination of the life of the mine, which action shall require a sixty-day notice to the operator alleging a violation of paragraph (a), (b), or (c) of this subsection (11), or that inadequate reasons are provided in an operator's report under such paragraphs. In such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present his or her full case and shall provide reasonable time for such operator to comply with this article.

(e) The operator complies with section 34-32.5-109 (2).

(12) "Mining" means the extraction of construction materials.

(13) "Mining operation" means the development or extraction of a construction material from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation. The term also includes transportation and processing operations on affected land. The term does not include concentrating, milling, evaporation, cleaning, preparation, transportation, and other off-site operations not conducted on affected land.

(14) "Office" means the office of mined land reclamation, created in section 34-32-105.

(15) "Open mining" means the mining of materials by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. "Open mining" also means mining directly from such deposits where there is no overburden. The term includes but is not limited to such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

(16) "Operator" means a person, firm, general or limited partnership, association, or corporation or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

(17) "Overburden" means earth and other materials that lie above natural minerals and includes earth and other materials that are disturbed from their natural state in the process of extracting construction materials.

(18) "Performance warranty" means a warranty of the type described in section 34-32.5-117 (2).

(19) "Reclamation" means the employment, during and after an operation, of procedures reasonably designed to minimize as much as practicable the disruption from an operation and provide for the establishment of plant cover, stabilization of soil, protection of water resources, or other measures appropriate to the subsequent beneficial use of the affected lands. Reclamation shall be conducted in accordance with the performance standards of this article.

(20) "Refuse" means all waste material directly associated with the cleaning and preparation of substances excavated by an operation.

Source: L. 95: Entire article added, p. 1156, § 1, effective July 1. **L. 2006:** (9) amended, p. 1193, § 1, effective May 25; (1) amended, p. 1285, § 2, effective May 26; (6) and (7) amended, p. 217, § 13, effective August 7.

34-32.5-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office and the board have the full power and authority to carry out and administer the provisions of this article. The office is responsible for the enforcement of reclamation permits only and has no authority or duty to enforce other local, state, or federal agency permits unless otherwise authorized by law.

Source: L. 95: Entire article added, p. 1159, § 1, effective July 1.

34-32.5-105. Office of mined land reclamation - mined land reclamation board. The office and the board created in section 34-32-105 shall administer this article.

Source: L. 95: Entire article added, p. 1160, § 1, effective July 1.

34-32.5-106. Duties of board. In addition to the duties of the board set forth in section 34-32-106 (1), the board shall cause to be published the minutes of its meetings and approve or deny reclamation permits. The board may delegate its responsibility to approve reclamation permits to the director except for regular permits under section 34-32.5-112, where there is a written objection.

Source: L. 95: Entire article added, p. 1160, § 1, effective July 1.

34-32.5-107. Powers of board. The board has the powers set forth in section 34-32-107.

Source: L. 95: Entire article added, p. 1160, § 1, effective July 1.

34-32.5-108. Rules. The board may adopt and promulgate reasonable rules respecting the administration of this article.

Source: L. 95: Entire article added, p. 1160, § 1, effective July 1.

34-32.5-109. Reclamation permit required - existing permits. (1) Before engaging in a new operation, an operator shall first obtain from the board or office a reclamation permit pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112. Notwithstanding this subsection (1), an operator who obtained a permit under section 34-32-110, 34-32-111, or 34-32-112 before July 1, 1995, which permit was valid as of such date, shall continue to operate under such permit, and such permit shall be deemed to be a permit issued under the provisions of this article.

(2) (a) A reclamation permit shall be effective for the life of the stated operation if the operator complies with the conditions of such reclamation permit, this article, and rules promulgated pursuant to this article that are in effect at the time the permit is issued or amended, except as otherwise provided in paragraph (b) of this subsection (2). Nothing in this article shall be construed to abrogate the duty of the operator to comply with other applicable statutes and rules.

(b) (I) This paragraph (b) shall apply to new statutory or regulatory requirements only and shall not serve to reopen the entire permit for technical review or for modification of the postmining land use.

(II) The board may, where good cause is shown, determine that certain regulations not in effect at the time a permit is given should be applicable to such existing permits or to any specified class or category of existing permits, if:

(A) The board or office provides individual notice of the subject matter of the proposed rule in such manner as the board may require and the time, date, and place of the rule-making hearing to operators with existing permits who may be affected by such rule;

(B) The board finds during the rule-making hearing that a failure to apply such proposed rule to existing permits or to an affected class or category of existing permits would pose a reasonable potential for danger to persons or property or the environment; and

(C) The board sets a schedule for existing permit-holding operators to comply with that is reasonable in light of the gravity of the risk to be avoided, any technical considerations, the cost of compliance, and any other relevant factors.

(III) If the board makes a good faith effort to comply with the requirements of sub-subparagraph (B) of subparagraph (II) of this paragraph (b) and complies with the applicable provisions of article 4 of title 24, C.R.S., the adopted rule shall not be deemed invalid on the ground that notice to the affected parties was inadequate.

(3) No governmental office of the state, other than the board, nor any political subdivision of the state shall have the authority to issue a reclamation permit pursuant to this article, to require reclamation standards different than those established in this article, or to require any performance or financial warranty of any kind for mining operations. The operator shall be responsible for assuring that the mining operation and the postmining land use comply with city, town, county, or city and county land use regulations and any master plan for extraction adopted pursuant to section 34-1-304 unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected political subdivisions. Any mining operator subject to this article shall also be subject to zoning and land use authority and regulation by political subdivisions as provided by law.

(4) Upon receipt of an application for a reclamation permit, the board shall provide notice of such application to all counties in which proposed mining operations are located and to each municipality located within two miles of the area of proposed mining operations.

Source: L. 95: Entire article added, p. 1160, § 1, effective July 1. L. 96: (1) amended, p. 179, § 5, effective April 18.

34-32.5-110. Existing limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations on less than ten acres, prior to commencement of mining, shall file with the office, on a form approved by the board, an application for a permit to conduct mining operations. This application shall contain the following:

(I) The address and telephone number of the general office and the local address or addresses and telephone number of the operator;

(II) The name, address, and telephone number of the owner of the surface of the affected land;

(III) The name of the owner of the subsurface rights of the affected land;

(IV) A statement that the operations will be conducted pursuant to the terms and conditions listed on the application and in accordance with the provisions of this article and the rules and regulations promulgated pursuant to this article at the time the permit was approved or amended;

(V) A map showing information sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) The approximate size of the affected land;

(VII) Information sufficient to describe or identify the type of mining operation proposed and how the operator intends to conduct it;

(VIII) A statement that the operator has applied for necessary local government approval;

(IX) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32.5-116.

(b) The application required by this subsection (1) shall be sent to the office. If the office denies the application, the applicant may appeal to the board for final determination.

(2) A fee as specified in section 34-32.5-125, and a financial warranty in an amount the board shall determine pursuant to section 34-32.5-117 (4), shall accompany the application and shall be paid by the applicant.

(3) The operator, at any time after the completion of reclamation, may notify the board that the land has been reclaimed. Upon receipt of the notice that the affected land or a portion of it has been reclaimed, the board shall cause the land to be inspected and shall release the performance and financial warranties or appropriate portions thereof within thirty days after the board finds the reclamation to be satisfactory and in accordance with a plan agreed upon by the board and the operator.

(4) Applications for permits made pursuant to subsection (1) of this section shall be processed and final action taken thereon within thirty days of the filing of such application. If action upon the application is not completed within thirty days, the permit shall be deemed approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount provided in subsection (2) of this section. The provisions

of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 concerning publication, notice, written objections, petitions, and supporting documents shall, so far as practicable, apply to this section, but the board shall, by regulation, provide simplified and reduced procedures and requirements that are applicable to the thirty-day period. Within the thirty-day period, the board may make a determination on an application as provided in sections 34-32.5-114 and 34-32.5-115.

(5) (a) Any operator conducting an operation under a permit issued under this section who has held the permit for two consecutive years or more and who subsequently desires to expand it to a size in excess of the limitation set forth in subsection (1) of this section may request the conversion of the permit by filing an application for a permit pursuant to subsection (1) of this section or section 34-32.5-112; except that the applicant need not supply information, materials, and other data and undertakings previously supplied, including any additional materials provided to the board during the course of his current operation or resulting from the board's inspections thereof.

(b) Applications for conversion of a permit under this subsection (5) shall be processed and final action taken thereon in accordance with subsection (1) of this section or section 34-32.5-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (5) or section 34-32.5-115, the conversion shall be deemed approved, and a permit for the life of the mine shall be promptly issued upon presentation by the applicant of a financial warranty subject to the limitations provided in subsection (2) of this section or in section 34-32.5-115 (3) or 34-32.5-117 (4).

(c) The provisions of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 concerning publication, notice, written objections, petitions, and supporting documents shall so far as practicable apply to this section.

(d) The board or office shall not deny the conversion of a permit for any reason other than those set forth in section 34-32.5-115 (4).

(6) If the operator is a department, division, or agency of federal, state, county, or municipal government, the operator may, at its discretion, submit one composite application and annual report for all similarly situated sand, gravel, or quarry operations. Such composite application and annual report shall comply with subsections (1) to (5) of this section. Financial warranty under subsection (2) of this section shall not be required of the operator if it is a unit of county or municipal government or the department of transportation and the operator submits a written guarantee, in lieu of financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit and section 34-32.5-116.

(7) An operator may, within the term of a reclamation permit, apply to the board or to the office for a reclamation permit amendment increasing the acreage to be affected or otherwise revising the reclamation plan. Where applicable, there shall be filed with any application for amendment a map and an application with the same content as required for an original application. The amended application shall be accompanied by a fee as specified in section 34-32.5-125.

Source: L. 95: Entire article added, p. 1161, § 1, effective July 1.

34-32.5-111. Special permits - fifteen-calendar-day processing. (1) An operator of a construction materials extraction operation shall be subject to this section if such operation is conducted solely to obtain materials for highway, road, utility, or similar construction purposes under a federal, state, county, city, town, or special district contract that requires work to commence within a specified short period of time and will affect no more than thirty acres of land.

(2) (a) An operator shall apply for a special permit by filing a written application with the board on forms provided by the board for such purpose. An approved special permit shall authorize the operator to engage in the operations described on such permit until the contractual reason for such operations has been completed.

(b) An application shall consist of:

(I) Three application forms;

(II) The application fee specified in section 34-32.5-125;

(III) The financial warranty specified in subsection (5) of this section, unless the office shows good cause that the board should set such financial warranty at a different amount pursuant to section 34-32.5-117; and

(IV) Three copies of an accurate map of the affected land, prepared by a professional land surveyor, professional engineer, or other qualified person. Such map shall show information sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the operation.

(c) Each application form shall include:

(I) The name and address of the general office and the local address or addresses of the operator;

(II) The name and address of the owner of the surface of the affected land;

(III) The name and address of the owner of the subsurface rights of the affected land;

(IV) The approximate size of the affected land;

(V) Information sufficient to describe or identify the type of operation proposed and how it will be conducted;

(VI) The measures to be taken to comply with applicable provisions of section 34-32.5-116;

(VII) The terms of the governmental contract which make a special permit necessary;

(VIII) Evidence of any financial warranty required under the governmental contract; and

(IX) A statement that the operator has applied for necessary local government approval.

(3) If the board determines that any of the affected land lies within the boundaries of lands described in section 34-32.5-115 (4) (f), such land shall be withdrawn from the operation.

(4) At any time after the completion of reclamation the operator may notify the board that the land or a portion of the land has been reclaimed. Upon receipt of such notice the board shall cause the land to be inspected, and, within sixty days after the board finds the reclamation to be satisfactory and in accordance with the plan agreed upon, the board shall release the performance and financial warranties or the appropriate portions of such warranties.

(5) Special permits shall be denied or issued by the board within fifteen calendar days after the date an application is submitted. Approval shall depend on the application, map, fee, performance warranty, and financial warranty being in compliance with this section. If action on an application is not completed within such fifteen-day period, the permit shall be approved and promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand five hundred dollars per affected acre or such other amount as may be specified by rule of the board.

(6) A governmental subdivision shall be exempt from subparagraphs (II) and (III) of paragraph (b) of subsection (2) of this section when such subdivision, acting as an operator, requires a permit solely to mine construction materials for the construction of public roads under a contract with the department of transportation or otherwise.

Source: L. 95: Entire article added, p. 1164, § 1, effective July 1.

34-32.5-112. Application for reclamation permit - changes in permits - fees - notice. (1) (a) To obtain a reclamation permit, an operator shall apply in writing to the board or the office on forms provided by the board. If approved, the reclamation permit shall authorize the operator to engage in the mining operation described in the application upon the affected land for the life of the mine.

(b) Each application shall consist of:

(I) Five copies of the application;

(II) A reclamation plan submitted with each copy of the application;

(III) An accurate map of the affected land submitted with each copy of the application; and

(IV) The application fee specified in section 34-32.5-125.

(c) Each application form shall include:

(I) The legal description and area of affected land;

- (II) The name of the owner of the surface of the area of affected land;
- (III) The name of the owner of the substance to be mined;
- (IV) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;
- (V) The address and telephone number of the general office and the local address and telephone number of the applicant;

(VI) Information sufficient to describe or identify the type of mining operation proposed and how the operator intends to conduct such operation;

(VII) The size of the area to be worked at any one time;

(VIII) A timetable estimating the periods required for various stages of the mining operation. The operator shall not be required to meet the timetable, nor shall the timetable be subject to independent review by the board or the office.

(2) The reclamation plan shall include provisions for, or a satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation shall be required on all the affected land. The reclamation plan shall include:

(a) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;

(b) A description of how the reclamation plan will be implemented to meet section 34-32.5-116;

(c) A proposed plan or schedule indicating when and how reclamation will be implemented, and such plan or schedule shall not be tied to a specific date but shall be tied to the implementation or completion of different stages of the mining operation;

(d) A map showing the proposed affected lands by all phases of the total scope of the mining operation. Such map shall:

(I) Indicate the expected physical appearance of the area of the affected land, correlated to the proposed timetables required by subparagraph (VIII) of paragraph (c) of subsection (1) of this section and the plan or schedule required by paragraph (c) of this subsection (2); and

(II) Portray the proposed final land use for each portion of the affected lands.

(3) The map of the affected lands shall:

(a) Be made by a professional land surveyor, professional engineer, or other qualified person;

(b) Identify the area that corresponds with the application;

(c) Show adjoining surface owners of record;

(d) Be made to a scale of not less than one hundred feet to the inch and not more than six hundred sixty feet to the inch;

(e) Show the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines within the area of the affected land and within two hundred feet of all boundaries of such area;

(f) Show the total area to be involved in the operation, including the area to be mined and the area of affected land;

(g) Show the topography of the area using contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

(h) Indicate on a map or by a statement the general type, thickness, and distribution of soil over the area in question, including the affected land;

(i) Show the type of vegetation covering the affected land.

(4) The reclamation plan shall also show by statement or map the depth and thickness of the deposit to be mined and the thickness and type of the overburden to be removed, and where overburden is stockpiled, the approximate volumes stockpiled.

(5) The application fee specified in section 34-32.5-125 shall be paid.

(6) Reclamation shall be completed within five years after the date the operator advises the board that each phase of construction material extraction has been completed, as provided in section 34-32.5-116 (4) (q). Such five-year period may be extended by the board upon a finding that additional time is necessary for the completion of the terms of the reclamation plan.

(7) (a) An operator may, within the term of a reclamation permit, apply to the board or the office for a reclamation permit amendment to increase the acreage to be affected or otherwise revise the reclamation plan. An application for the amendment of a reclamation permit shall be reviewed by the board or office in the same manner as an application for a new reclamation permit. The operator shall also submit such supplemental performance and financial warranties as may be required by the board or office for the additional acreage. If the area described in the original application is reduced, then the amount of the financial warranty shall be reduced proportionately. When applicable, the operator shall file with the application for amendment a map and an application with the same content as required for an original application.

(b) An amended application shall be accompanied by the fee specified in section 34-32.5-125.

(c) When an operator files a notice of temporary cessation pursuant to section 34-32.5-103 (1) (b), such notice shall be accompanied by the fee specified in section 34-32.5-125.

(8) The information provided in an application for a reclamation permit that relates to the location, size, or nature of the deposit or information required by subsection (4) of this section and that is marked confidential by the operator shall be protected by the board and the office as confidential information. Such information shall not be a matter of public record in the absence of a written release from the operator or until the mining operation has been terminated. A person who willfully and knowingly violates this subsection (8) or section 34-32.5-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(9) (a) Upon the filing of an application for a reclamation permit, the applicant shall place a copy of such application for public inspection at the office of the board and the office of the county clerk and recorder of the county in which the affected land is located. Such copy shall not include the information exempted by subsection (8) of this section. The copy placed at the office of the county clerk and recorder shall not be recorded but shall be retained until such application has been heard by the board or the office and shall be available for inspection during such period. At the end of such period, the copy may be reclaimed or destroyed by the applicant.

(b) The applicant shall cause notice of the filing of the application to be published in a newspaper of general circulation in the area of the proposed mining operation once a week for four consecutive weeks, commencing not more than ten days after the filing of such application with the board or office. Such notice shall contain information about the:

(I) Identity of the applicant;

(II) Location of the proposed mining operation, if such information does not violate subsection (8) of this section;

(III) Proposed dates of commencement and completion of the operation;

(IV) Proposed future use of the affected land;

(V) Location where additional information about the operation may be obtained;

(VI) Location and final date for filing objections with the board or the office.

(c) The applicant shall mail a copy of such notice immediately after first publication to all owners of record of the surface and mineral rights of the affected land, the owners of record of all land surface within two hundred feet of the affected lands, and any other owners of record designated by the board who may be affected by the proposed mining operation. Proof of such notice and mailing, such as certified mail with return receipt requested, where possible, shall be provided to the board or the office and shall become part of the application.

Source: **L. 95:** Entire article added, p. 1165, § 1, effective July 1. **L. 2002:** (8) amended, p. 1546, § 301, effective October 1. **L. 2004:** (9)(c) amended, p. 758, § 1, effective May 13.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

34-32.5-113. Exploration notice - reclamation requirements. (1) A person desiring to conduct exploration shall, prior to entry upon the lands, file with the board a notice of intent to conduct exploration operations on a form approved by the board. Such notice shall be accompanied by the fee specified in section 34-32.5-125.

(2) The notice shall contain:

- (a) The name of the person or organization doing the exploration;
- (b) A statement that exploration will be conducted pursuant to the terms and conditions listed on the approved form;
- (c) A brief description of the type of operations that will be undertaken;
- (d) A description of the lands to be explored, by township and range;
- (e) An approximate date of commencement of operations; and
- (f) A description of the measures to be taken to reclaim affected lands, consistent with section 34-32.5-116.

(3) All information provided to the board in a notice of intent to conduct exploration shall be protected as confidential information by the board and shall not be a matter of public record. In the absence of a written release from the operator.

(4) (a) Upon filing a notice of intent to conduct exploration, the applicant shall provide a financial warranty in an amount determined by the office.

(b) An applicant may submit statewide warranties for exploration if such warranties are in an amount fixed by the board by rule and such person otherwise complies with this section for every area to be explored.

(5) Upon completion of the exploration, there shall be filed with the board a notice of completion of exploration operations. Reclamation shall be completed according to section 34-32.5-116 and the approved notice of intent.

(6) All drill holes sunk for the purpose of exploring for locatable or leasable minerals on any land within the state of Colorado shall be plugged, sealed, or capped pursuant to this subsection (6) by the person conducting the exploration. This subsection (6) shall not apply to holes drilled in conjunction with a mining operation for which the board has issued a permit nor to wells or holes regulated pursuant to section 34-33-117 and to article 60 of this title or article 80, 90, 91, or 92 of title 37, C.R.S.

(7) (a) Drill holes sunk for exploration purposes shall be abandoned in the following manner:

(I) Any artesian flow of groundwater to the surface shall be eliminated by a plug made of cement or similar material or by a procedure sufficient to prevent such flow.

(II) (A) Drill holes that encounter an aquifer in volcanic or sedimentary rock shall be sealed using a sealing procedure that is adequate to prevent fluid communication between aquifers.

(B) For purposes of this subparagraph (II), "aquifer" shall have the same meaning as set forth in section 37-90-103 (2), C.R.S.

(III) Each drill hole shall be securely capped at a minimum depth that is compatible with local cultivation practices or at a minimum of two feet below either the original land surface or the collar of the hole, whichever is lower. The cap shall be made of concrete or other material which is satisfactory for such capping and the site shall be backfilled above the cap to the original land surface.

(IV) If a drill hole is to be ultimately used as or converted to a water well, the user shall comply with the applicable provisions of title 37, C.R.S.

(V) Each drill site shall be reclaimed pursuant to section 34-32.5-116, including, if necessary, reseeding if grass or a crop was destroyed.

(b) Abandonment in the manner provided in paragraph (a) of this subsection (7) shall occur immediately following the drilling of the hole and the probing for construction materials in the exploration process; except that a drill hole may be maintained as temporarily abandoned without being plugged, sealed, or capped. However, no drill hole that is to be temporarily abandoned without being plugged, sealed, or capped shall be left in such a condition as to allow fluid communication between aquifers. Such temporarily abandoned drill holes shall be securely covered in a manner that will prevent injury to persons and animals.

(c) No later than sixty days after the completion of the abandonment of a drill hole that has artesian flow at the surface, the person conducting the exploration shall submit to the head of the office a report containing the location of such hole to within two hundred feet of its actual location, the estimated rate of flow of such artesian flow, if known, and a description of the technique used to plug such drill hole. Such report shall be confidential and shall not be a matter of public record.

(d) No later than twelve months after the completion of the abandonment of a drill hole, the person conducting the exploration shall file with the head of the office a report containing the location of the hole to the nearest forty-acre legal subdivision and the facts of the technique used to plug, seal, or cap the hole. Such report and the information in such report shall be confidential and shall not be a matter of public record.

(e) The head of the office may waive, upon written application filed with the director, any of the administrative provisions of this subsection (7) that pertain to aquifers.

(8) The board shall inspect explored lands within ninety days after receiving notification from the person exploring the lands that reclamation has been completed. If the board finds the reclamation satisfactory, it shall release all applicable performance and financial warranties. The financial warranty shall not be held for more than sixty days after satisfactory completion.

(9) The board and the office are authorized to inspect any ongoing exploration operation or any exploration operation prior to the request for release of performance and financial warranties in order to determine compliance with this article.

Source: L. 95: Entire article added, p. 1169, § 1, effective July 1.

34-32.5-114. Protests - petition for hearing. An aggrieved person has the right to file written objections to and any person has the right to file written statements in support of an application for a permit and to petition for a hearing. Such protests or petitions for a hearing shall be filed with the board or office not more than twenty days after the date of last publication of notice made pursuant to section 34-32.5-112 (9). For good cause shown in such protest or petition documents, the board may, in its discretion, hold a hearing pursuant to section 34-32.5-115 to determine whether the permit should be granted. The applicant shall be notified within ten days after any objections are filed with respect to the application and shall be supplied with a copy of the written objections.

Source: L. 95: Entire article added, p. 1171, § 1, effective July 1.

34-32.5-115. Action by board - appeals. (1) Upon receipt of an application for a permit and all fees due from the operator, the board or the office shall set a date for the consideration of such application not more than ninety days after the date of filing. At that time, the board or the office shall approve or deny the application or, for good cause shown, refer the application for a hearing to determine whether a permit should be granted.

(2) Prior to holding a hearing, the board or the office shall provide notice to any person who filed a protest or petition for a hearing or statement in support of an application pursuant to section 34-32.5-114. Notice of the time, date, and location of the hearing shall be published in a newspaper of general circulation in the locality of the proposed mining operation once a week for the two consecutive weeks immediately preceding the hearing. The hearing shall be conducted pursuant to article 4 of title 24, C.R.S. A final decision on the application shall be made within one hundred twenty days after the receipt of the application. In the event of complex applications, serious unforeseen circumstances, or significant snow cover on the affected land that prevents a necessary on-site inspection, the board may reasonably extend the time in which a final decision must be made by sixty days.

(3) If action upon an application is not completed within the period specified in subsection (2) of this section, the permit shall be considered to be approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand dollars per acre affected or such other amount as determined by the board.

(4) In the determination of whether the board or the office shall grant a permit to an operator, the applicant must comply with the requirements of this article and section 24-4-105 (7), C.R.S. The board or office shall not deny a permit except on one or more of the following grounds:

(a) The application is incomplete and the performance and financial warranties have not been provided.

(b) The applicant has not paid the required fee.

(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this article.

(d) The proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this state or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation.

(e) The mining operation will adversely affect the stability of any significant, valuable, and permanent manmade structures located within two hundred feet of the affected land; except that the permit shall not be denied on this basis where there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator or, where such an agreement cannot be reached, the applicant provides an appropriate engineering evaluation that demonstrates that such structures shall not be damaged by proposed construction materials excavation operations.

(f) The mining operation is located upon lands:

(I) Where mining operations are prohibited by law or regulation within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, or national recreation areas;

(II) Which are within or without the boundaries of, and are owned, leased, or have been developed by, any recreational facility established pursuant to article 7 of title 29, C.R.S., unless otherwise authorized by the appropriate governing body or unless the operation will not create any surface disturbance therein;

(III) Which are within the boundaries of, and are owned, leased, or have been developed by, any park and recreation district established pursuant to article 1 of title 32, C.R.S., unless otherwise authorized by the board of directors of the district or unless the operation will not create any surface disturbance therein; and

(IV) Which are within the boundaries of any unit of the state park system or any state recreational area in which the entire fee estate is owned by the state of Colorado, unless the mining operation is approved jointly by the board, by the governor, and by the parks and wildlife commission or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan does not conform to the requirements of section 34-32.5-116.

Source: L. 95: Entire article added, p. 1172, § 1, effective July 1. **L. 2012:** (4)(f)(IV) amended, (HB 12-1317), ch. 248, p. 1234, § 88, effective June 4.

34-32.5-116. Duties of operators - reclamation plans. (1) Every operator to whom a permit is issued pursuant to this article shall perform the reclamation prescribed by the reclamation plan adopted pursuant to this section.

(2) Reclamation plans shall be based upon provisions for, or satisfactory explanation of, all general requirements for the type of reclamation chosen. The details of the plan shall be appropriate to the type of reclamation necessary to achieve the proposed postmining land use.

(3) (a) Each year, on the anniversary date of the permit, an operator shall submit the annual fee specified in section 34-32.5-125, a report and map showing the extent of current disturbances to affected land, reclamation accomplished to date and during the preceding year, new disturbances that are anticipated to occur during the upcoming year, reclamation that will be performed during the coming year, the dates for the beginning of active operations, and the date active operations ceased for the year, if any.

(b) Notwithstanding any provision of paragraph (a) of this subsection (3), an operator who has filed an application pursuant to this article shall submit the annual fee specified in section 34-32.5-125 in addition to the map and plan. Where an operator is late in payment of the annual fee by greater than sixty days, the office shall set the matter for a hearing before the board for permit revocation and forfeiture of the financial warranty.

(4) Reclamation plans and their implementation are required on all affected lands and shall conform to the following requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final post-extraction land use selected in accordance with paragraph (m) of this subsection (4).

(b) If earth dams are constructed to impound water, the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules, or regulations of the federal government or the state of Colorado or with any local government pollution ordinances.

(c) An operator shall demonstrate that all mined material disposed of within the affected area and all affected areas to be reclaimed as part of the approved application will not result in any unauthorized release of pollutants to the surface drainage system.

(d) No unauthorized release of pollutants to groundwater shall occur from any materials mined, handled, or disposed of within the permit area.

(e) All refuse shall be disposed of in a manner that controls unsightliness or the deleterious effects of such refuse.

(f) In those areas where revegetation is part of the reclamation plan, land shall be revegetated so that a diverse, effective, and long-lasting vegetative cover is established that is capable of self-regeneration and is at least equal, with respect to the extent of cover, to the natural vegetation of the surrounding area. Species chosen for revegetation shall be compatible for the proposed post-extraction land use and shall be of adequate diversity to establish successful reclamation.

(g) Where it is necessary to remove overburden to mine the construction material, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a period of time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that such topsoil is preserved from wind and water erosion, remains free of contamination, and is in a useable condition for sustaining vegetation when restored during reclamation. If, in the discretion of the board, such topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other strata which are best able to support vegetation.

(h) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems, both during and after the mining operation and during reclamation, shall be minimized. Nothing in this paragraph (h) shall be construed to allow the operator to avoid compliance with other statutory provisions governing well permits and augmentation requirements and replacement plans when applicable.

(i) Areas outside of the affected land shall be protected from slides or damage occurring during the mining operation and reclamation.

(j) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion.

(k) All affected areas to be seeded or to receive transplants shall be seeded or transplanted using reclamation practices and techniques acceptable to the office. Planting methods include seedbed and seed preparation and soil amendments appropriate to the topography, physical and chemical characteristics of soil, and selected plant species adequate to give the best chance for successful reclamation.

(l) The operator may permit the public to use lands it owns for recreational purposes in accordance with the limited landowner liability law contained in article 41 of title 33, C.R.S., except in areas where such use is found by the operator to be hazardous or objectionable.

(m) With respect to all affected land, the operator, in consultation with the landowner where possible subject to the approval of the board, shall determine which parts of the

affected land shall be reclaimed for forest, range, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Before approving a new reclamation plan or a change in an existing reclamation plan, the board may confer with the local board of county commissioners and the board of supervisors of the conservation district if the mining operation is within the boundaries of a conservation district.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to slopes commensurate with the proposed land use that shall not be too steep to be traversed by livestock. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local conservation district, if any, shall determine when grazing may start.

(o) If the operator's choice of reclamation is for agricultural or horticultural crops that normally require the use of farm equipment, the operator shall grade the affected land so the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization, and seeding or planting rates shall be governed by general agricultural and horticultural practices except where research or experience in such operations differs with such practices.

(p) If the operator's choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the minimum requirements necessary for such reclamation shall be agreed upon between the operator and the board.

(q) (I) All reclamation requirements required by this section shall be carried to completion with reasonable diligence and conducted concurrently with mining operations to the extent practicable, taking into consideration the mining plan, safety, economics, the availability of equipment and material, and other site-specific conditions relevant and unique to the affected land and the postmining land use. Upon completion of each phase of mining and, in accordance with the reclamation plan, final reclamation of each mining phase shall be completed prior to the expiration of five years after the date the operator advises the board in an annual report that such phase of mining has been completed, unless such period is extended by the board pursuant to section 34-32.5-112; except that reclamation may be completed in phases and the five-year period may be applied separately to each phase as it commences during the life of the mine.

(II) No planting shall be required on affected land:

(A) Used or proposed to be used by the operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse or proposed for future mining operations;

(B) Within depressed haulage roads or final cuts while such roads or final cuts are being used or made; or

(C) Where permanent pools or lakes have been formed.

(III) No planting of any kind shall be required on affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are chemically incompatible with plant growth, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures. When natural weathering and leaching of any of such affected land, over a period of five years after commencement of reclamation, fails to remove the chemical and physical characteristics inhibitory to plant growth or if, at any time within such five-year period, the board determines that any of such affected land is, and during the remainder of said five-year period will be, unplantable, the operator's obligations under the provisions of this article with respect to such affected land may, with the approval of the board, be discharged by reclamation of an equal number of acres of land previously mined and owned by the operator and not otherwise subject to reclamation under this article.

(IV) With the approval of the board and the owner of the land to be reclaimed, an operator may substitute land previously mined and owned by the operator that is not otherwise subject to reclamation under this article or, in the alternative, with the approval of the board and the owner of the land, reclamation of an equal number of acres of any lands previously excavated or mined but not owned by the operator if the operator has not

previously abandoned unreclaimed land affected by mining operations. As an alternative, the board may grant the reclamation of lesser or greater acreage if the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If an area is so substituted, the operator shall submit a map of the substituted area conforming to all map requirements in this article. Upon completion of reclamation of the substituted land, the operator shall be relieved of all obligations under this article with respect to the land for which substitution has been permitted.

(r) A building, or a structure placed on affected land during extraction operations, may remain on the affected land at the option of the operator with the approval of the landowner and the board if such building or structure conforms to local building and zoning codes and is compatible with the postmining land use.

Source: **L. 95:** Entire article added, p. 1174, § 1, effective July 1. **L. 96:** (3) amended, p. 180, § 6, effective April 18. **L. 2002:** (4)(m) and (4)(n) amended, p. 518, § 16, effective July 1.

34-32.5-117. Warranties of performance - warranties of financial responsibility - release of warranties. (1) A permit shall not be issued under this article until the board receives the performance and financial warranties described in subsections (2), (3), and (4) of this section.

(2) A "performance warranty" is a written promise made by the operator to the board to comply with this article and shall be in such form as the board may prescribe. Whenever two or more persons or entities are named as operators in a single permit, such operators may limit the scope of their individual performance warranties if such warranties, in the aggregate, warrant the performance of all requirements of this article.

(3) (a) A "financial warranty" is a written promise a party makes to the board to be responsible for reclamation costs, up to the amount specified in subsection (4) of this section, and includes proof of financial responsibility. A financial warranty shall be in such form as the board may prescribe and may be provided by the operator, by a third party, or by any combination of persons or entities.

(b) The board may accept interests in real and personal property as financial warranties to the extent of a specified percentage of the estimated value of such property. A person offering such a financial warranty shall submit information to show clear title to and the value of such property.

(c) The board may refuse to accept a financial warranty if:

(I) The value of such warranty is dependent upon the success, profitability, or continued operation of the mine; or

(II) It determines that such warranty cannot reasonably be converted to cash within one hundred eighty days of forfeiture.

(d) For construction materials operations:

(I) This subsection (3) shall apply on July 1, 1993, to a deed of trust used as collateral for a new financial warranty completed on or after such date;

(II) This subsection (3) shall be effective on January 1, 1996, with respect to a:

(A) Financial warranty that is collateral for a deed of trust used as collateral for a financial warranty in existence on July 1, 1993, and subsequent amendments of such deed of trust; and

(B) Financial warranty completed before July 1, 1993, if the value of such financial warranty includes a construction material value or if construction material value is used to update such warranty. The value of a financial warranty described in this sub-subparagraph (B) shall include the construction material value for the life of the warranty.

(e) An instrument offered as a financial warranty pursuant to this subsection (3) shall provide that the board may recover any necessary costs it incurs, including attorney fees, in foreclosing on or realizing collateral used to secure such financial warranty in the event of forfeiture.

(f) Proof of financial responsibility may consist of one or more of the following, subject to approval by the board:

(I) A surety bond issued by a corporate surety authorized to do business in this state;

- (II) A letter of credit issued by a bank authorized to do business in the United States;
- (III) A certificate of deposit;
- (IV) A deed of trust or security agreement encumbering real or personal property and creating a first lien in favor of this state;

(V) Assurance, in such form as the board may require, that:

(A) Upon commencement of production, the operator will establish an individual reclamation fund to be held by an independent trustee for the board, upon such terms and conditions as the board may prescribe, and funded by periodic cash payments representing such fraction of receipts as will, in the opinion of the board, provide assurance that funds will be available for reclamation;

(B) Prior to the issuance of a permit, the operator will provide another form of financial warranty as described in this paragraph (f). As the reclamation fund increases in value, the other form of financial warranty may be decreased in value so long as the sum of financial warranties is the amount specified in subsection (4) of this section.

(C) Project-related fixtures and equipment, excluding rolling stock, owned or to be owned by the financial warrantor within the permit area will have a salvage value at least equal to the amount of the financial warranty or the appropriate portion of such warranty;

(D) Existing liens and encumbrances applicable to project-related fixtures and equipment shall be subordinated to the lien described in section 34-32.5-118; except that liens in favor of the United States, a state, or a political subdivision shall not be so subordinated;

(E) Project-related fixtures and equipment shall be maintained in good operating condition and will not be removed from the permit area without the prior consent of the board;

(VI) A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that:

(A) The financial warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;

(B) The obligations enjoy a rating by such rating organization of 'A' or better;

(C) The financial warrantor's net worth was at least twice the amount of all financial warranties made by such warrantor as of the close of the most recent fiscal year;

(VII) A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that as of the close of such year the financial warrantor's:

(A) Net worth was at least ten million dollars and was equal to or greater than twice the amount of all financial warranties;

(B) Tangible fixed assets in the United States were worth at least twenty million dollars;

(C) Total liabilities-to-net-worth ratio was not more than two to one;

(D) Net income, excluding nonrecurring items, was positive. Nonrecurring items that affect net income shall be stated in order to determine if they materially affect self-bonding capacity.

(VIII) Proof that the operator is a department or division of state government or a unit of county or municipal government.

(g) Proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with subsection (4) of this section.

(4) (a) The board shall prescribe the amount and duration of financial warranties, taking into account the nature, extent, and duration of the proposed mining operation and the magnitude, type, and estimated cost of planned reclamation.

(b) (I) In a single year during the life of a permit the amount of required financial warranties shall not exceed the estimated cost of fully reclaiming all lands to be affected in such year plus all lands affected in previous permit years and not yet fully reclaimed. For purposes of this paragraph (b), reclamation costs shall be computed with reference to current reclamation costs. A financial warranty shall be sufficient to assure the completion of reclamation of affected lands if, because of forfeiture, the office has to complete such reclamation and shall include an additional amount equal to five percent of the amount of the financial warranty to defray administrative costs incurred by the office in conducting the reclamation.

(II) The office and the board shall take reasonable measures to assure the continued adequacy of a financial warranty.

(c) (I) The board may:

(A) From time to time and for good cause shown, increase or decrease the amount and duration of a required financial warranty;

(B) By rule or permit condition, require that proof of value of all or any group of warranties held by the board be submitted on a periodic basis;

(C) By rule or permit condition, limit certain types of warranties to specific purposes or require that a specified percentage of the total bond be held in easily valued and convertible instruments.

(II) A financial warrantor shall have sixty days after the date of notice of an adjustment to fulfill the new requirements.

(5) (a) An operator may file a written notice of completion with the office whenever such operator believes that any or all requirements of this article have been completed with respect to any or all of such operator's affected lands. Within sixty days after receiving such notice, or as soon as weather conditions permit, the office shall inspect affected lands and the reclamation described in the notice to determine if the operator has complied with all applicable requirements.

(b) If the board or office finds that an operator has successfully complied with any or all requirements of this article, it shall release all performance and financial warranties applicable to such requirements. Releases shall be in writing and delivered promptly to the owner or operator after the date of such finding.

(c) If the board or office finds that an operator has not complied with applicable requirements of this article, it shall advise the operator of such noncompliance not more than sixty days after the date of the inspection.

(d) If the office fails to conduct an inspection within the time specified in paragraph (a) of this subsection (5) or to advise the operator of deficiencies within the time specified in paragraph (c) of this subsection (5), then all financial warranties applicable to the reclamation described in the notice shall be deemed released as a matter of law.

(6) (a) A financial warranty shall be maintained in good standing for the entire life of a permit issued under this article. A financial warrantor shall immediately notify the board of an event that may impair its warranty.

(b) Each financial warrantor who provides proof of financial responsibility in a form described in subsection (3) (f) (IV) to (3) (f) (VII) or subsection (8) of this section shall cause to be filed with the board a certification by an independent auditor. Such certification shall be filed annually and shall provide that, as of the close of the financial warrantor's most recent fiscal year, such financial warrantor continued to meet all applicable requirements of such subparagraphs (IV) to (VII). A financial warrantor who no longer meets such requirements shall cause to be filed an alternate form of financial warranty.

(c) A financial warrantor who provides proof of financial responsibility in a form described in paragraph (b) of this subsection (6) shall notify the board within sixty days after a net loss is incurred in a quarterly period.

(d) Whenever the board receives a notice under paragraph (a) or (c) of this subsection (6), fails to receive a certification or substitute warranty as required by paragraph (b) of this subsection (6), or otherwise has reason to believe that a financial warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

(e) Whenever the board convenes a hearing pursuant to this subsection (6), it may hire an independent consultant to provide expert advice at the hearing. The fees of any such consultant shall be paid by the financial warrantor, and no consultant shall be hired until the financial warrantor signs a written fee agreement in such form as the board may prescribe. If a financial warrantor refuses to sign such an agreement, the board may, without hearing, order such financial warrantor to provide an alternate form of financial warranty.

(f) If the board finds, at any hearing held pursuant to this subsection (6), that a financial warranty has been materially impaired, it may order the financial warrantor to provide an alternate form of financial warranty.

(g) A financial warrantor shall have ninety days to provide any alternate warranty required under this subsection (6).

(h) All hearings held under this subsection (6) shall comply with the requirements of article 4 of title 24, C.R.S.

(7) For purposes of this section, a "Rating of 'A' or better" means that a nationally recognized rating organization has determined that the obligations are at least of an upper-medium grade. This means that the factors giving security to the principal and interest are considered to be adequate but elements may be present that suggest the possibility of adverse effects if economic and trade conditions change.

(8) (a) The board or office may accept a first-priority lien on project-related fixtures and equipment that must remain on site for the reclamation plan to be performed in lieu of including the cost of acquiring and installing such fixtures and equipment in the amount of the financial warranty prescribed pursuant to subsection (4) of this section.

(b) The board or office may accept a first-priority lien on project-related fixtures and equipment that must be demolished or removed from the site under a reclamation plan and may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited does not exceed the cost of demolishing and removing such fixtures and equipment or the market value of such fixtures and equipment, whichever is less.

(c) Any fixtures and equipment accepted pursuant to this subsection (8) shall be insured and maintained in good operating condition and shall not be removed from the permit area without the prior consent of the board. A financial warrantor that provides a lien on such equipment and fixtures shall file an annual report with the office in sufficient detail to fully describe the condition, value, and location of all pledged fixtures and equipment. Such financial warrantor shall not pledge such equipment and fixtures to secure any other obligation and shall immediately notify the office of any other interest that arises in the pledged property.

Source: L. 95: Entire article added, p. 1178, § 1, effective July 1.

34-32.5-118. Forfeiture of financial warranties. (1) A financial warranty shall be subject to forfeiture whenever the board determines that one or more of the following circumstances exist:

(a) The operator has violated a cease-and-desist order entered pursuant to section 34-32.5-124 and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to do so has elapsed; or

(b) The operator is in default under a performance warranty and has failed to cure such default although the operator has been given written notice and has had ample time to do so; or

(c) The financial warrantor has failed to maintain a financial warranty in good standing as required by section 34-32.5-117; or

(d) The financial warrantor no longer has the financial ability to carry out any obligations required under this article.

(2) When the board has reason to believe a financial warranty is subject to forfeiture, it shall so notify the operator and all financial warrantors. The board shall grant the operator and all financial warrantors the right to appear before the board at a hearing to be held not less than thirty days after the parties' receipt of such notice. Any such hearing shall be held in accordance with article 4 of title 24, C.R.S.

(3) (a) At a hearing held pursuant to subsection (2) of this section, the board may withdraw or modify any determination that the financial warranty is subject to forfeiture, settle or compromise the determination, or confirm its determination that the financial warranty should be forfeited.

(b) Upon finding that a financial warranty should be forfeited, the board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected financial warrantors to immediately deliver to the board all amounts warranted by applicable financial warranties.

(4) (a) The board, upon issuing an order pursuant to subsection (3) of this section, may request the attorney general to institute proceedings to secure or recover amounts warranted by forfeited financial warranties. The attorney general shall have the power, inter alia, to:

(I) Foreclose upon any real and personal property encumbered for the benefit of the state;

(II) Collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the board;

(III) Dispose of pledged property.

(b) The amount of a forfeited financial warranty shall constitute a lien upon project-related fixtures or equipment offered as proof of financial responsibility pursuant to section 34-32.5-117. Such lien shall be in favor of this state.

(c) The lien described in paragraph (b) of this subsection (4) shall have priority over all other liens and encumbrances, irrespective of the date of recordation, except liens of record on June 19, 1981, and liens of the United States, this state, and political subdivisions of this state for unpaid taxes and shall attach and be deemed perfected as of the date the board approves issuance of the operator's permit.

(5) Funds recovered by the attorney general in proceedings brought pursuant to subsection (4) of this section shall be held in the special account described in section 34-32.5-122 and shall be used to reclaim lands covered by forfeited warranties; except that five percent of the amount of such forfeited warranties shall be deposited in the mined land reclamation fund, created in section 34-32-127, to cover administrative costs incurred by the office in performing reclamation. The board shall have a right of entry to reclaim such lands, and upon completion of such reclamation the board shall present a full accounting to the financial warrantor and shall refund all unspent moneys.

(6) Notwithstanding any discharge of applicable financial warranties, an operator in default shall remain liable for the actual cost of reclaiming affected lands less any amounts expended by the board pursuant to subsection (5) of this section.

(7) Notwithstanding any provision of this section to the contrary, a corporate surety may elect to reclaim affected lands in accordance with an approved plan in lieu of forfeiting a bond penalty.

Source: L. 95: Entire article added, p. 1183, § 1, effective July 1.

34-32.5-119. Operators - succession. When one operator succeeds another at an uncompleted operation, the board shall release the first operator from all liability as to that operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes all liability for the reclamation of the affected land and such obligation is covered by appropriate performance and financial warranties. The fee specified in section 34-32.5-125 (1) (a) (X) shall be paid to the board by the successor operator before the first operator is released from liability and before any financial warranties are released.

Source: L. 95: Entire article added, p. 1185, § 1, effective July 1. **L. 96:** Entire section amended, p. 180, § 7, effective April 18.

34-32.5-120. Permit refused - operator in default. The board shall not grant a permit for new mining operations to an operator who is found to be in violation of this article at the time of application.

Source: L. 95: Entire article added, p. 1185, § 1, effective July 1.

34-32.5-121. Entry upon lands for inspection - reporting certain conditions.
(1) The board, the office, or their authorized representatives may enter upon the lands of an operator at any reasonable time for inspection purposes to determine if the requirements of this article have been or are being met.

(2) Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property.

Source: L. 95: Entire article added, p. 1185, § 1, effective July 1.

34-32.5-122. Fees, civil penalties, and forfeitures - deposit. (1) All fees and assessments collected pursuant to this article and five percent of the proceeds of any financial warranty forfeited pursuant to section 34-32.5-123 for administrative costs associated with reclaiming sites for which the financial warranty has been revoked shall be deposited in the mined land reclamation fund, created in section 34-32-127. All civil penalties collected pursuant to this article shall be deposited in the general fund. Ninety-five percent of the proceeds of all financial warranties forfeited under section 34-32.5-118 shall be deposited in a special account in the general fund established by the board for the purpose of reclaiming lands that were required to be reclaimed under permits upon which such financial warranties had been forfeited.

(2) An applicant that desires to use the self-insurance provisions in section 34-32.5-117 (3) (f) (IV) to (3) (f) (VII) or (8) shall pay an annual fee to the office sufficient to defray the actual cost to the office of establishing and reviewing the financial warranty of such applicant. Such funds are hereby annually made available to the office, which shall utilize outside financial and legal services for this purpose.

Source: L. 95: Entire article added, p. 1185, § 1, effective July 1.

34-32.5-123. Operating without a permit - penalty. (1) If an operator or person conducting exploration fails to obtain a valid permit or file a notice of intent pursuant to this article, the board or the office may issue an immediate cease-and-desist order. Concurrently with the issuance of such an order, the board or the office may seek a restraining order or injunction pursuant to section 34-32.5-124.

(2) An operator who operates without a permit shall be subject to a civil penalty of not less than one thousand dollars per day nor more than five thousand dollars per day for each day the land has been affected, not to exceed three hundred sixty-five days. An operator who mines substantial acreage beyond the approved permit boundary may be found to be operating without a permit.

(3) A person who conducts exploration without filing a notice of intent shall be subject to a civil penalty of not less than fifty dollars per day nor more than two hundred dollars per day for each day the land has been affected. Such penalties shall be assessed for not less than one day and not more than sixty days.

(4) In addition to the civil penalties imposed in subsections (2) and (3) of this section, the board shall also assess a civil penalty in an amount not less than the amount necessary to cover costs incurred by the division in investigating the alleged violation.

Source: L. 95: Entire article added, p. 1186, § 1, effective July 1.

34-32.5-124. Failure to comply with conditions of order, permit, or regulation. (1) Whenever the board or the office has reason to believe that a violation of an order, permit, notice of intent, or regulation issued under this article has occurred, written notice of the alleged violation shall be given to the operator or person conducting the exploration. Such notice shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to have been violated and the facts alleged to constitute such violation and may include the nature of any corrective action proposed to be required.

(2) If the board determines that any provision of this article or any notice, permit, or regulation issued or promulgated pursuant to this article has been violated, it may issue a cease-and-desist order. Such order shall set forth the provisions alleged to be violated, the

facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated. Such order may include the nature of any corrective action proposed to be required and shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the violator's agent for service of process.

(3) If an operator fails to comply with a cease-and-desist order issued by the board, the board or the office may request the attorney general to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order. Suits under this section shall be brought in the district court where the alleged violation occurs. If the board or the office determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

(4) The board or the office may require the alleged violator to appear before the board no sooner than thirty days after the issuance of such cease-and-desist order; except that an earlier date for hearing may be requested by the alleged violator.

(5) If a hearing is held pursuant to this section, it shall be open to the public and conducted in accordance with article 4 of title 24, C.R.S. The board shall permit all parties to respond to the notice served, present evidence and arguments on all issues, and conduct the cross-examination necessary for a full disclosure of the facts.

(6) (a) Upon a determination, after a hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke such permit.

(b) If the board suspends or revokes the permit of an operator, such operator may continue mining operations only for the purpose of bringing such operations into satisfactory compliance with the provisions of such operator's permit. Once such operations are completed to the satisfaction of the board, the board shall reinstate such permit.

(7) A person who violates any provision of a permit issued under this article shall be subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day for each day during which such violation occurs.

Source: L. 95: Entire article added, p. 1186, § 1, effective July 1.

34-32.5-125. Mined land reclamation fund - fees. (1) Fees for fiscal year 2007-08 and for each subsequent year of operation shall be collected by the office for operations according to the following schedule:

- (a) Applications pursuant to:
 - (I) Section 34-32.5-110 (2)\$ 1,258
 - (II) Section 34-32.5-110 (2) relating to permit amendments\$ 827
 - (III) Section 34-32.5-111\$ 898
 - (IV) Section 34-32.5-112, except for applications relating to the mining operations specified in subparagraph (I) of this paragraph (a)\$ 2,696
 - (V) Section 34-32.5-112 relating to quarries\$ 3,342
 - (VI) Section 34-32.5-112 (8) relating to reclamation permit amendments\$ 2,229
 - (VII) Sections 34-32.5-110 to 34-32.5-112 relating to revisions to permits other than amendments\$ 216
 - (VIII) Section 34-32.5-103 (11) relating to temporary cessations of operations\$ 144
 - (IX) Section 34-32.5-113\$ 108
 - (X) Section 34-32.5-119\$ 144
- (b) Annual fees for fiscal year 2007-08 and for each subsequent year for operations pursuant to:
 - (I) Section 34-32.5-110 (2)\$ 323
 - (II) Section 34-32.5-112\$ 791
 - (III) Section 34-32.5-111\$ 504
 - (IV) Section 34-32.5-113\$ 86
- (c) (Deleted by amendment, L. 2000, p. 1165, § 1, effective July 1, 2000.)
- (2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncom-

mitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: **L. 95:** Entire article added, p. 1187, § 1, effective July 1. **L. 98:** (2) added, p. 1341, § 62, effective June 1. **L. 2000:** (1) amended, p. 1165, § 1, effective July 1. **L. 2007:** IP(1), (1)(a), and (1)(b) amended, p. 960, § 2, effective July 1.

ARTICLE 33

Colorado Surface Coal Mining Reclamation Act

34-33-101.	Short title.	34-33-122.	Inspections and monitoring.
34-33-102.	Legislative declaration.	34-33-123.	Enforcement - civil and criminal penalties.
34-33-103.	Definitions.	34-33-124.	Review by board.
34-33-104.	Administration.	34-33-125.	Release of performance bonds or deposits.
34-33-105.	Jurisdiction of office and board.	34-33-126.	Designating areas unsuitable for surface coal mining.
34-33-106.	Additional duties of division.	34-33-127.	Public agencies, public utilities, and public corporations.
34-33-107.	Powers of department.	34-33-128.	Judicial review.
34-33-108.	Rules and regulations - no more stringent.	34-33-129.	Surface coal mining operations not subject to this article.
34-33-109.	Permits.	34-33-130.	Data inventory.
34-33-110.	Application for permit.	34-33-131.	Informal opinion as to alluvial valley floors.
34-33-111.	Reclamation plan requirements.	34-33-132.	Special coordination and review process - site-specific agreements.
34-33-112.	Small operator assistance.	34-33-133.	Abandoned mine reclamation plan.
34-33-113.	Performance bonds.	34-33-133.5.	Colorado mine subsidence protection program - rules.
34-33-114.	Permit approval or denial.	34-33-134.	Experimental practices.
34-33-115.	Revision of permit.	34-33-135.	Civil actions.
34-33-116.	Technical revision of permit.	34-33-136.	Water rights.
34-33-117.	Coal exploration permit.	34-33-137.	Reservation clause.
34-33-118.	Public notice and public hearings on complete applications.		
34-33-119.	Permit application decisions of the office - appeals.		
34-33-120.	Environmental protection performance standards.		
34-33-121.	Surface effects of underground coal mining.		

34-33-101. Short title. This article shall be known and may be cited as the "Colorado Surface Coal Mining Reclamation Act".

Source: **L. 79:** Entire article added, p. 1254, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?" see 51 U. Colo. L. Rev. 551 (1980).

34-33-102. Legislative declaration. It is declared to be the policy of this state that surface coal mining operations and the reclamation of land affected by such operations are both necessary and proper activities. The purpose of this article is to assure that the coal required for local and national energy needs and for economic and social well-being is provided and to provide a balance among the protection of the environment, agricultural

productivity, and the need for coal as an essential source of energy. It is the intent of the general assembly by the enactment of this article to allow for the continued development of the surface coal mining operations in this state, while requiring those persons involved in surface coal mining operations to reclaim land affected by such operations as contemporaneously as possible with the surface coal mining operations so that the affected land may be put to a beneficial use. It is the further intent of the general assembly by the enactment of this article to protect society and the environment from the adverse effects of surface coal mining operations, assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations; assure that surface coal mining operations are not conducted where reclamation as required by this article is not feasible; and to assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the state under this article. It is the further intent of the general assembly to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this article and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public, to aid in the protection of wildlife and aquatic resources, and to protect and promote the health, safety, and general welfare of the people of this state. It is the intent of the general assembly that, in the administration of this article, the small operator be assisted in complying with the provisions of this article, particularly in the areas of bonding, technical and administrative assistance, and timely processing of permit applications.

Source: L. 79: Entire article added, p. 1254, § 1, effective July 1.

34-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Administrator" means the head of the office of mined land reclamation in the division of reclamation, mining, and safety in the department of natural resources.

(2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be permitted where the board determines that they are in compliance with section 34-33-120 (2) (h).

(4) "Board" means the mined land reclamation board created pursuant to section 34-32-105.

(5) "Complete permit application" means an application which minimally addresses each and every requirement of sections 34-33-110 and 34-33-111 and section 34-33-120 or 34-33-121.

(6) "Department" means the department of natural resources.

(7) "Division" means the division of reclamation, mining, and safety in the department of natural resources.

(8) "Executive director" means the executive director of the department of natural resources.

(9) "Federal land" means any land, including mineral interests, owned by the United States, but excluding Indian lands.

(10) "Historic areas" means those lands which are listed or are eligible for listing in the national register of historic places or the state register of historic properties or which are designated pursuant to the federal "Historic Sites, Buildings, and Antiquities Act", as amended.

(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, in a surface coal mining and reclamation operation which could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions, or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(12) "Indian lands" means all lands, including, but not limited to, mineral interests and rights-of-way, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, including mineral interests held in trust for or supervised by any Indian tribe.

(13) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the secretary of the United States department of the interior.

(13.5) "Office" means the office of mined land reclamation, created in section 34-32-105.

(14) "Operator" means any person engaged in surface coal mining and reclamation operations who removes or intends to remove more than two hundred fifty tons of coal from the earth or from coal mine waste disposal facilities within twelve consecutive calendar months in any one location.

(15) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, oil shale and oil extracted from shale by an in situ process, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

(16) "Permit" means a permit to conduct surface coal mining and reclamation operations.

(17) "Permit applicant" or "applicant" means a person applying for a permit.

(18) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 34-33-113 and shall be readily identifiable by appropriate markers on the site.

(19) "Permit revision" means a significant alteration of the terms or requirements of a permit issued pursuant to this article, including, but not limited to, significant changes in the reclamation plan, and other actions which the board may by regulation prescribe. "Permit revision" does not include a technical revision as defined in subsection (27) of this section.

(20) "Permittee" means a person holding a permit.

(21) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, Indian tribe conducting surface coal mining and reclamation operations outside Indian lands, any other business organization, and any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(22) "Prime farmland" shall have the same meaning prescribed pursuant to the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the regulations thereunder.

(23) "Reclamation plan" means a plan submitted by an applicant under this article which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 34-33-111.

(24) "Secretary" means the secretary of the United States department of the interior.

(25) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(26) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of section 34-33-121 which involve surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, removal of

coal from coal mine waste disposal facilities, the use of explosives and blasting, and the use of in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; except that such activities do not include any of the following: Coal exploration subject to section 34-33-117, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe, or the extraction of geothermal resources.

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(27) "Technical revision" means a minor change, including incidental boundary revisions, to the terms or requirements of a permit issued under this article, which change shall not cause a significant alteration in the operator's reclamation plan.

(28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this article due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of such permit or this article due to indifference, lack of diligence, or lack of reasonable care.

Source: **L. 79:** Entire article added, p. 1255, § 1, effective July 1. **L. 81:** (14) and (26)(a) amended, p. 1681, § 1, effective June 16. **L. 92:** (14), (21), and (26)(a) amended, p. 1894, § 1, effective May 29; (1) and (7) amended and (13.5) added, p. 1944, § 48, effective July 1. **L. 95:** (14), (21), and (26)(a) amended, p. 147, § 1, effective April 7. **L. 2006:** (1) and (7) amended, p. 217, § 14, effective August 7.

Cross references: For the "Historic Sites, Buildings, and Antiquities Act", see 16 U.S.C. §§ 461-467; for the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

34-33-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office and board have the full power and authority to carry out and administer the provisions of this article.

Source: **L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** Entire section amended, p. 1945, § 49, effective July 1.

34-33-105. Jurisdiction of office and board. The office and board shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this article.

Source: **L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** Entire section amended, p. 1945, § 50, effective July 1.

34-33-106. Additional duties of division. (1) In addition to duties of the division set forth in article 32 of this title, the division shall:

(a) Carry on a continuing review of the problems of surface coal mining and land reclamation in this state;

(b) Cause to be published the monthly agenda of the board with a brief description of any affected land and the name of the applicant. These publications shall be in a newspaper

of general circulation in the locality of the proposed surface coal mining operations listed in that month's agenda.

(2) It is the duty of the department of agriculture, the department of higher education, the department of public health and environment, the state conservation board, the Colorado geological survey, the division of water resources, the division of parks and wildlife, the university of Colorado, Colorado state university, Colorado school of mines, and the state forester to furnish the board and its designees, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of reclamation and enforcement duties pursuant to this article. ~

Source: L. 79: Entire article added, p. 1258, § 1, effective July 1. L. 2002: (2) amended, p. 515, § 7, effective July 1.

34-33-107. Powers of department. The department may initiate and encourage studies and programs with the office and other appropriate state agencies relating to the development of less destructive methods of surface coal mining operations, better methods of land reclamation, more effective reclaimed land use, and coordination of the provisions of this article with the programs of other state agencies dealing with environmental, recreational, rehabilitation, and related concerns.

Source: L. 79: Entire article added, p. 1258, § 1, effective July 1. L. 92: Entire section amended, p. 1945, § 51, effective July 1.

34-33-108. Rules and regulations - no more stringent. (1) Upon passage of this article, the board shall commence development of reasonable rules and regulations respecting the administration and enforcement of this article and, in conformance therewith, shall promulgate such reasonable rules and regulations pursuant to the provisions of section 24-4-103, C.R.S. Rules and regulations promulgated pursuant to this article shall be no more stringent than required to be as effective as the federal "Surface Mining Control and Reclamation Act of 1977", as amended and federal regulations thereunder, unless the board makes a specific finding that either protection of the public safety or the environment requires a more stringent regulation. Nothing in this subsection (1) shall supercede rules in effect prior to May 29, 1992.

(2) Any rule or regulation promulgated by the board which is required by a federal law, rule, or regulation shall become repealed and shall not be enforced when said federal law is repealed or said federal rule or regulation is deleted or withdrawn. Any provision of a permit issued under this article that is required by any rule of the board which is repealed in accordance with this subsection (2) shall not be enforceable. The repeal of such rule or regulation shall become effective ninety days after publication of the repeal in the federal register but, upon request, will be subject to a rule-making hearing by the board as set forth in article 4 of title 24, C.R.S.

Source: L. 79: Entire article added, p. 1258, § 1, effective July 1. L. 81: Entire section amended, p. 1681, § 2, effective June 16; entire section amended, p. 1685, § 1, effective June 23. L. 92: Entire section amended, p. 1897, § 8, effective May 29. L. 95: (2) amended, p. 148, § 2, effective April 7.

Editor's note: "Upon passage of this article", as used in the first sentence of subsection (1), refers to the initial enactment of this article by L. 79, chapter 328.

Cross references: For the federal "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq.

34-33-109. Permits. (1) No later than eight months after the date on which a Colorado program is approved by the secretary pursuant to section 503 of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, (Pub.L. 95-87), such date to be determined and set forth in a rule of the board, no person shall conduct on lands

within this state any surface coal mining and reclamation operations unless such person has first obtained a permit under this article; except that a person conducting surface coal mining and reclamation operations under an existing valid permit may conduct such operations beyond such date if an application for a permit has been filed in accordance with the provisions of this article, but the initial administrative decision has not been rendered; and except that no permit shall be required for reclamation operations on abandoned or unreclaimed lands not required to be reclaimed under state or federal law.

(2) No later than two months following said approval of a Colorado program by the secretary, all operators of surface coal mines, operating on such date of approval and intending to operate such mines after the expiration of eight months from such approval of the Colorado program, shall file an application for a permit with the division; except that, with regard to the requirements of section 34-33-110 (2) (1), such application shall be considered filed for the purposes of this subsection (2) if it contains all applicable hydrologic information reasonably available to the applicant as of the date of the application.

(3) If, upon such date of approval by the secretary of a Colorado program, a person has filed with the office an application for a permit in accordance with the "Colorado Mined Land Reclamation Act" and section 502 of said Pub.L. 95-87, and the office or board has not yet made a final decision on such application, the board or office shall, unless such application is withdrawn, act on such application in accordance with the "Colorado Mined Land Reclamation Act" and section 502 of Pub.L. 95-87; except that in no event shall such person be relieved of the obligation to obtain a permit as required by subsection (1) of this section and said Pub.L. 95-87.

(4) No governmental office of the state, other than the board or office, nor any political subdivision of the state shall have the authority to require reclamation of lands affected or proposed to be affected by surface coal mining operations.

(5) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years; except that, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the board or office may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days after succeeding to such interest and who is able to obtain bond coverage the same as or equivalent to that of the original permittee may continue surface coal mining and reclamation operations according to the approved surface coal mining operations and reclamation plan of the original permittee until such successor's application is granted or denied.

(6) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years after the issuance of the permit; except that the office or board may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee; except that, in the case of a coal lease issued under the federal "Mineral Lands Leasing Act", as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that act; and except that, with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface coal mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(7) (a) Any permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to permit areas. The holder of the permit may apply for renewal, and such renewal shall be issued subsequent to fulfillment of the public notice requirements of sections 34-33-118 and 34-33-119, unless it is established by a preponderance of the evidence and written findings by the board are made that:

(I) The terms and conditions of the existing permit are not being satisfactorily met; except that renewal may be granted to the holder of the permit on the condition that the holder of the permit demonstrates that said holder of the permit is meeting and will continue

to meet a schedule agreed to by such holder of the permit and the office for correcting any permit violation, consistent with section 34-33-123;

(II) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this article or regulations promulgated thereunder;

(III) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(IV) The operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the board or office might require pursuant to section 34-33-113; or

(V) Any additional revised or updated information required by the office has not been provided.

(b) Prior to the approval of any renewal of permit, the office shall provide notice to the United States office of surface mining reclamation and enforcement, to the surface and mineral owners of record of the affected land, and to the board of county commissioners of the county in which the affected land is located.

(c) If an application for renewal of a permit includes a proposal to extend the surface coal mining and reclamation operations beyond the existing permit area, the portion of the application for renewal which addresses any new land areas shall be subject to the full standards applicable to new applications under this article; except that, if the surface coal mining and reclamation operations authorized by a permit issued pursuant to this article were not subject to the standards contained in section 34-33-114 (2) (e) (I) by reason of the exception provided in section 34-33-114 (2) (e) (II), the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to section 34-33-111 shall not be subject to the standards contained in section 34-33-114 (2) (e) (I).

(d) Any permit renewal shall be for an additional term not to exceed the period of the original permit established by this article. Application for a permit renewal shall be made at least one hundred eighty days prior to the expiration of the existing permit. The office shall mail to the operator notice of the need to renew such permit at least ninety days prior to the final date for permit renewal.

(e) In any hearing on renewal of a permit, the burden of persuasion shall be on the opponents of renewal.

(f) The holder of a valid permit may continue surface mining operations under said permit, subject to section 34-33-123, beyond the expiration date until a final administrative decision on renewal is rendered if a renewal application is received by the office at least one hundred eighty days prior to the expiration date of the permit.

Source: L. 79: Entire article added, p. 1258, § 1, effective July 1. L. 92: (3) to (6), (7)(a)(I), (7)(a)(IV), (7)(a)(V), (7)(b), (7)(d), and (7)(f) amended, p. 1945, § 52, effective July 1.

Cross references: For the federal "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq; for the "Mineral Lands Leasing Act", see 30 U.S.C. 181 et seq; for the "Colorado Mined Land Reclamation Act", see article 32 of this title.

34-33-110. Application for permit. (1) Any person desiring to obtain a permit to perform surface coal mining and reclamation operations shall make written application therefor to the office on forms approved by the board. Each application shall be submitted pursuant to the provisions of this article and shall be accompanied by a fee of twenty-five dollars, plus ten dollars for each acre of affected land; except that such fee shall not exceed two thousand five hundred dollars and shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to this article. The board shall develop procedures so as to enable the cost of the fee to be paid over the term of the permit. All fees collected under the provisions of this article shall be deposited in the general fund.

(2) The permit application shall include the following:

(a) The name of the applicant and the address and telephone number of the general office and the local office of the applicant;

(b) The names and addresses of:

(I) Every legal owner of record of the property (surface and mineral) to be mined;

(II) The holders of record of any leasehold interests in the property;

(III) Any purchaser of record of the property under a real estate contract;

(IV) The operator, if he is a person different from the applicant;

(V) The owners of record of all surface and subsurface property interests adjacent to any part of the permit area;

(c) If any of the entities described in paragraph (a) or (b) of this subsection (2) are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(d) A statement of any current or previous surface coal mining permits held by the applicant for operations in the United States and the permit identification in each pending application;

(e) If the applicant is a partnership, corporation, association, or other business entity, where applicable, the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning of record ten percent or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application;

(f) A statement of whether the applicant or any subsidiary, affiliate, or person controlled by or under common control with the applicant has ever held any federal or state mining permit for surface coal mining operations which, in the five-year period prior to the date of submission of the application, has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(g) A copy of the applicant's notification to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, which notification shall include the names of every legal owner of record of property (surface and mineral) in the proposed site, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location at which the application is available for public inspection;

(h) A description of the type and method of surface coal mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed;

(i) The anticipated or actual starting and termination dates of each phase of the surface coal mining operation and the number of acres of land to be affected;

(j) An accurate map or plan, of an appropriate scale, clearly showing the land to be affected as of the date of the application and the area of land within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations and a statement of those documents upon which the applicant bases such legal right to enter and commence surface coal mining operations on the area affected and whether that right is the subject of pending court litigation; except that nothing in this article shall be construed as vesting in the board or office the jurisdiction to adjudicate property rights disputes;

(k) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(l) A determination of the probable hydrologic consequences of the surface coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that an assessment can be made by the office of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability;

(m) When requested by the office, the climatological factors that are unique to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(n) Accurate maps or plans, of an appropriate scale, clearly showing the land to be affected as of the date of application and all types of information set forth on topographical maps of the United States geological survey of a scale of one to twenty-four thousand or one to twenty-five thousand or larger, including all manmade features and significant known archeological sites existing on the date of application. Such maps or plans shall show, among other things specified by the office, all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area.

(o) Cross sections, maps, or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a qualified licensed professional engineer or professional geologist, showing pertinent elevation and location of test borings or core samplings and depicting the following: The nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all coal crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; the location of any settling or water treatment facility; the location of constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(p) A statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam; and an analysis of the chemical and physical properties, including sulphur content, of such coal; a chemical analysis of potentially acid-forming or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined; except that the provisions of this paragraph (p) may be waived by the board or office with respect to the specific application by a written determination that such requirements are unnecessary; and

(q) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey made or obtained according to standards established by the secretary of the United States department of agriculture in order to confirm the exact location of such prime farmlands, if any.

(3) Each applicant shall be required to submit to the office as part of the permit application a reclamation plan which shall meet the requirements of this article.

(4) Each applicant shall file a copy of the application for public inspection with the county clerk and recorder of the county where the surface coal mining operations are proposed to occur, or any other public office, subject to regulations issued by the board, except for that information pertaining to the coal seam itself.

(5) Each applicant shall be required to submit to the office as part of the permit application evidence that the applicant has satisfied other state or federal self-insurance requirements or a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the term of the permit or any renewal, including the term of all reclamation operations.

(6) Each applicant shall submit to the office as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 34-33-120 (2) (o).

(7) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected; except that information which pertains to the quantity of coal or the analysis of the chemical and physical properties of the coal (excepting that information which the office reasonably believes to concern a mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(8) The permit application, including the reclamation plan, shall contain such other information, in addition to that required by this section or by section 34-33-111, or regulations promulgated thereunder, as the office deems necessary; except that requests by the office for such additional information shall be based upon good cause shown in terms of site specific needs and shall bear a reasonable relationship to the purposes and provisions of this article. Any applicant or operator shall have the right, at any regular meeting of the board, upon proper notice, to seek the informal opinion of the board concerning any information request or requirement made by the office in connection with the permit application or reclamation plan contained therein, and such informal opinion shall not be binding on any of the parties.

Source: L. 79: Entire article added, p. 1261, § 1, effective July 1. L. 92: (4) amended, p. 1895, § 2, effective May 29; (1), (2)(j), (2)(l), (2)(m), (2)(n), (2)(p), (3), and (5) to (8) amended, p. 1947, § 53, effective July 1. L. 2004: (2)(o) amended, p. 1314, § 67, effective May 28.

34-33-111. Reclamation plan requirements. (1) Each reclamation plan submitted as part of a permit application pursuant to this article shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(a) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought;

(b) The condition of the land to be covered by the permit prior to any surface coal mining operations, including:

(I) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining;

(II) The capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 34-33-110 (2) (q); and

(III) The productivity of the land prior to mining, including appropriate classification as prime farmlands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(c) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface and the federal, state, and local governments or agencies thereof which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation;

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(e) The engineering techniques proposed to be used in the surface coal mining and reclamation operations and a description of the major equipment to be used; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 34-33-120 (2) (g), for those food, forage, and forest lands subject to the

provisions of section 34-33-120 (2) (g); an estimate of the cost per acre of the reclamation, including a statement as to how the applicant plans to comply with each of the requirements set out in section 34-33-120;

(f) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(g) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(h) The consideration which has been given to making the surface coal mining and reclamation operations consistent with surface-owner plans and with applicable state and local land use plans and programs;

(i) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards as administered by applicable state and federal agencies;

(j) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;

(k) All lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(l) The results of test boring made at the area or other equivalent information and data in a form satisfactory to the office, including the location of subsurface water, and an analysis of the chemical properties, including acid-forming properties, of the mineral and overburden; except that information which pertains to the quantity of the coal or to the analysis of the chemical and physical properties of the coal (excepting that information which the office reasonably believes to concern a mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and shall not be made a matter of public record;

(m) A detailed description of the measures to be taken during the surface coal mining and reclamation operations to assure the protection of:

(I) The quality of surface water and groundwater systems, both on-site and off-site, from adverse effects of the surface coal mining and reclamation operations;

(II) The rights of present users to such water; and

(III) The quantity of water in surface and groundwater systems. Protection measures may include providing water by exchange, substitution, replacement, or augmentation, as appropriate under state law.

(2) Any information required by this section which is not on public file pursuant to state law shall be held in confidence by the board and the office.

Source: L. 79: Entire article added, p. 1264, § 1, effective July 1. L. 92: (1)(l) and (2) amended, p. 1949, § 54, effective July 1.

34-33-112. Small operator assistance. (1) If the office finds that the probable total annual production at all locations of any operator or parent company will not exceed one hundred thousand tons, upon written request of the operator, the office shall, to the extent that funding or services are appropriated or otherwise provided for the express purposes of this section:

(a) Have performed by a qualified public or private laboratory designated by the board the determination of probable hydrologic consequences required by section 34-33-110 (2) (l) and the statement of test borings or core samplings required by section 34-33-110 (2) (p);

(b) Provide additional necessary technical and administrative assistance to the operator in the preparation of permit applications and revisions under this article.

Source: L. 79: Entire article added, p. 1266, § 1, effective July 1. L. 92: Entire section amended, p. 1949, § 55, effective July 1.

34-33-113. Performance bonds. (1) After a permit application has been approved but before a permit is issued, the applicant shall file with the division, on a form prescribed

and furnished by the board, a performance bond, payable to this state and conditioned upon faithful performance of all the requirements of this article and the permit. The bond shall cover the area of land within the permit area upon which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the board an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined as part of the proposed decision of the office pursuant to section 34-33-114, and subject to review by the board as provided in section 34-33-119. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the board in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than ten thousand dollars.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operations and for a period coincident with the operator's responsibility for revegetation requirements in section 34-33-120. The bond shall be executed by the applicant and a corporate surety licensed to do business in this state; except that the applicant may elect to deposit cash, negotiable bonds of the United States government or any political subdivision of this state, or negotiable certificates of deposit of any bank or other savings institution organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. Cash or securities so deposited shall be deposited on the same terms upon which surety bonds may be deposited.

(3) The office may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the office that the applicant has the financial means sufficient to self-bond for reclamation, pursuant to reasonable bonding regulations promulgated by the board, consistent with the purposes and provisions of this article.

(4) Cash or securities posted as bond shall be deposited by the state treasurer in separate escrow accounts, to be known as reclamation surety accounts, and interest accruing on said funds shall be paid to the operator annually.

(5) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the office from time to time for good cause as affected land acreages are increased or decreased or when the cost of future reclamation changes.

Source: **L. 79:** Entire article added, p. 1266, § 1, effective July 1. **L. 92:** (1), (3), and (5) amended, p. 1950, § 56, effective July 1. **L. 97:** (3) amended, p. 172, § 1, effective March 28.

34-33-114. Permit approval or denial. (1) Upon the basis of a complete permit application, including a reclamation plan, or revision or renewal thereof, as required by this article, including public notification and opportunity for public hearing as required by sections 34-33-118 and 34-33-119, the office shall process the permit application and issue a proposed decision granting or denying the permit, in whole or in part, or requiring modifications to the permit application within the time periods provided for in sections 34-33-118 and 34-33-119, and the office shall notify the applicant in writing of the proposed decision. The applicant for a permit or for a revision of a permit shall have the burden of establishing that such application is in compliance with all the requirements of this article. Within ten days after issuing its proposed decision granting or denying a permit, the office shall file a notice with the board of county commissioners of the county in which the area of land to be affected is located stating the proposed decision issued and describing the location of the affected land.

(2) No application for a permit or for a revision of an existing permit shall be approved unless the application affirmatively demonstrates and the office or board finds in writing, on the basis of the information set forth in the application or from information otherwise

available which will be documented in the decision and made available to the applicant, that:

(a) The permit application is accurate and contains all information required under this article and regulations promulgated thereunder and that all the requirements of this article have been complied with;

(b) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 34-33-110 (2) (I) has been made by the office and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside the permit area;

(d) Granting the permit will not conflict with any designation decision issued pursuant to section 34-33-126 or pursuant to section 522 of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, Pub.L. 95-87, nor is the area proposed to be mined within an area under study for unsuitability designation in an administrative proceeding commenced pursuant to section 34-33-126 or section 522 of said Pub.L. 95-87;

(e) (I) The proposed surface coal mining operations would:

(A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands upon which the board finds that the farming which will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on said land's agricultural production; or

(B) Not materially damage the quantity or quality of surface water or groundwater systems that supply the alluvial valley floors described in sub-subparagraph (A) of this subparagraph (I).

(II) The requirements of subparagraph (I) of this paragraph (e) shall not affect those surface coal mining operations which, in the year preceding August 3, 1977, either produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained permit approval to conduct surface coal mining operations within said alluvial valley floors.

(f) In cases where the applicant proposes to extract coal by surface methods and where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the office:

(I) The written consent of the surface owner to the extraction of coal by surface coal mining; or

(II) A conveyance that expressly grants or reserves the right to extract the coal by surface coal mining, but, if the conveyance does not expressly grant the right to extract coal by surface coal mining, the surface-subsurface legal relationship shall be determined in accordance with state law; except that nothing in this article shall be construed to authorize the board to adjudicate property rights disputes;

(g) Subject to valid rights existing as of August 3, 1977, and with the further exception of those surface coal mining operations which were in existence on August 3, 1977, the application:

(I) Does not include any lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under said act, and national recreation areas designated by act of the United States congress;

(II) Does not include any federal lands within the boundaries of any national forest; except that surface coal mining operations may be permitted on such lands if the secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and:

(A) Surface operations and impacts are incident to an underground coal mine; or

(B) Where the secretary of the United States department of agriculture determines, with respect to lands in national forests which do not have significant forest cover, that surface mining is in compliance with the "Multiple-Use Sustained-Yield Act of 1960", as amended,

the “Federal Coal Leasing Amendments Act of 1975”, as amended, the “National Forest Management Act of 1976”, as amended, and the provisions of this article;

(III) Will not adversely affect any publicly owned park or place included in the national register of historic sites unless approved jointly by the office and the federal, state, or local agency with jurisdiction over the park or the historic site;

(IV) Does not include lands within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line; except that the office may permit such roads to be relocated or the area affected to lie within one hundred feet of such road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected; and

(V) Does not include lands within three hundred feet of any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building or school, church, community, or institutional building or any public park, nor within one hundred feet of a cemetery.

(3) The applicant shall file with his permit application a schedule listing any and all notices of violations of this article and any applicable law of the United States or of this state, or any applicable rule or regulation of any department or agency of the United States, other states, and this state, pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operations during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. When the schedule or other information available to the board or office indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this article or such other laws referred to in this subsection (3), the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the board, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the board, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled such surface coal mining operations with a demonstrated pattern of willful violations of this article of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article.

(4) (a) In addition to finding the application in compliance with the provisions of subsection (2) of this section, if the surface area proposed to be affected by the operation contains prime farmland pursuant to section 34-33-110 (2) (q), the office shall, after consultation with the secretary of the United States department of agriculture, and pursuant to regulations issued by the secretary of the United States department of the interior with the concurrence of the secretary of the United States department of agriculture, grant a permit to mine on prime farmland if the board or office finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and that the operator can meet the soil reconstruction standards in section 34-33-120 (2) (g). Except as provided in subsection (2) of this section, the requirements of this paragraph (a) shall apply to all permits issued on and after August 3, 1977.

(b) Nothing in this subsection (4) shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface coal mining and reclamation operations for which a permit was issued prior to August 3, 1977.

Source: **L. 79:** Entire article added, p. 1267, § 1, effective July 1. **L. 81:** (3) amended, p. 1681, § 3, effective June 16. **L. 92:** (1), IP(2), (2)(c), IP(2)(f), (2)(g)(III), (2)(g)(IV), (3), and (4)(a) amended, p. 1950, § 57, effective July 1.

Cross references: For the “Surface Mining Control and Reclamation Act of 1977”, see 30 U.S.C. 1201 et seq.; for the “Multiple-Use Sustained-Yield Act of 1960”, see 16 U.S.C. sec. 528 et seq.; for the “Federal Coal Leasing Amendments Act of 1975”, see 30 U.S.C. secs. 184, 191, 201, 202, 207, and 208; for the “National Forest Management Act of 1976”, see 16 U.S.C. 1600 et seq.

34-33-115. Revision of permit. (1) (a) During the term of the permit, the permittee may submit an application for revision of the permit, together with any necessary revisions to the reclamation plan, to the office.

(b) An application for revision of a permit shall not be approved unless the office finds that the reclamation required by this article can be accomplished under any necessary revisions to the reclamation plan. The revisions shall be approved or disapproved within the time periods provided for by sections 34-33-118 and 34-33-119. The board shall, by regulation, establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; except that any revisions which propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements.

(c) Any applications for extension of the area covered by the permit, except incidental boundary revisions, must be made by application for a permit revision or another permit.

(2) No transfer, assignment, or sale of rights granted under any permit issued pursuant to this article shall be made without the written approval of the division.

(3) The office shall, within a time limit prescribed in regulations promulgated by the board, review outstanding permits and may, for good cause shown, require reasonable revisions or modifications of the permit provisions during the term of each such permit; except that such revisions or modifications shall be based upon written findings and shall be subject to the notice and hearing requirement established by this article.

Source: L. 79: Entire article added, p. 1270, § 1, effective July 1. L. 92: Entire section amended, p. 1952, § 58, effective July 1. L. 95: (1)(c) amended, p. 148, § 3, effective April 7.

34-33-116. Technical revision of permit. (1) During the term of the permit, the permittee may submit an application for a technical revision of the permit to the office.

(2) An application for a technical revision of a permit shall contain:

(a) An identification of the permit by permit number or other appropriate reference which is the subject of the technical revision;

(b) A specific description of the requested change in the terms of the permit; and

(c) Such other information as may be necessary for the office to properly evaluate the technical revision.

(3) Consistent with the provisions of subsection (2) of this section, the board may promulgate regulations further defining the form and content of applications for technical revisions; except that applications for technical revisions shall not be subject to the full standards and information requirements applicable to new permit applications under this article; and except that the board or office may reasonably request additional information to evaluate the proposed technical revision.

(4) The board shall promulgate regulations providing for the processing of applications for technical revisions, which regulations shall provide for adequate public notice of such applications and an opportunity for an expeditious hearing before the board for any person who may be adversely affected by the proposed technical revision.

(5) Within sixty days after the filing of a complete application for a technical revision, the office shall issue a proposed decision approving or denying the application in whole or in part. A written copy of such decision shall be promptly provided to the permittee and shall be published once in a newspaper of general circulation in the locality of the affected surface coal mining operation. Any requests for a hearing regarding the proposed decision of the office must be received in writing by the office within ten days after such publication. If no request for a hearing is received within such ten-day period, the proposed decision of the office shall immediately become final.

Source: L. 79: Entire article added, p. 1271, § 1, effective July 1. L. 92: Entire section amended, p. 1953, § 59, effective July 1.

34-33-117. Coal exploration permit. (1) Coal exploration activities which cause substantial disturbance of the natural land surface shall be conducted in accordance with exploration regulations issued by the board. Such regulations shall include, at a minimum:

(a) A requirement that, prior to conducting any exploration under this section, any person must file with the office notice of intention to explore, including a description of the exploration area and the period of supposed exploration; and

(b) Provisions for reclamation in accordance with the performance standards in section 34-33-120 of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(2) Information submitted to the office pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.

(3) Any person who conducts any coal exploration activities which cause substantial disturbance of the natural land surface in violation of this section or regulations issued pursuant to this section shall be subject to the provisions of section 34-33-123.

(4) No operator shall remove more than two hundred fifty tons of coal pursuant to an exploration permit without the specific written approval of the board or office.

(5) The regulations adopted pursuant to this section shall include any additional requirements and provisions which the board deems necessary; except that such regulations shall have a reasonable relation to the purposes and provisions of this article.

Source: L. 79: Entire article added, p. 1271, § 1, effective July 1. **L. 92:** (1)(a), (2), and (4) amended, p. 1953, § 60, effective July 1.

34-33-118. Public notice and public hearings on complete applications. (1) Upon submission of an application for permit, or revision or renewal thereof, as provided by this article, the office shall, within ten days of receipt of said application, review the submission and determine if it is complete. If the application is complete, the applicant shall be duly notified and the application shall be considered filed for the purposes of this article. If the application is incomplete, notice to that effect shall be mailed to the applicant within said ten-day period, and the applicant shall be given the opportunity to amend, revise, or otherwise make said application complete. At the time of submission of an application for a permit, or for renewal or revision of an existing permit, pursuant to the provisions of this article, the applicant shall submit to the office the proposed notice of publication of the ownership, precise location, and boundaries of the land to be affected by the proposed surface coal mining operation.

(2) Upon notification to the applicant that the application for a permit or the application for a permit revision or renewal is complete, the applicant shall place the notice of ownership, precise location, and boundaries of land to be affected by the proposed surface coal mining operation in a local newspaper of general circulation in the locality of said operation. This publication shall be published at least once a week for four consecutive weeks.

(3) On or before the time of first publication, the office shall notify appropriate state and federal agencies and various local government bodies, municipalities, regional planning commissions, boards of county commissioners, county planning agencies, sewage and water treatment authorities, and water conservancy and water conservation districts in the locality in which the proposed surface coal mining operations will take place of the operator's application indicating the application number, a legal description of the land covered by the application, and where a copy of the application may be inspected. These local bodies, agencies, or authorities may submit written comments, within thirty days of the last publication of the above notice, with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted to the applicant by the office and shall be made available to the public at the same locations as the permit application.

(4) Any person having an interest which is or may be adversely affected by a decision of the office regarding the proposed surface coal mining operation, or the officer or head of any federal, state, or local government agency or authority, shall have the right to submit written objections to or comments upon the initial or revised application for a permit to the office within thirty days after the last publication of the above notice. Such objections and

comments shall immediately be transmitted to the applicant by the office and shall be made available to the public, at the same locations as the permit application.

(5) Within sixty days of the filing of an application for a permit, the office shall review said application and notify the applicant of preliminary findings as to the substantive adequacy or inadequacy of the application.

(6) Within thirty days after the last publication of the notice specified in subsection (2) of this section, any person who files objections or comments pursuant to subsection (3) or (4) of this section may also request an informal conference. If an informal conference is requested, the office shall hold an informal conference in the locality of the proposed surface coal mining operation. Notice of the date, time, and location of such informal conference shall be given to the applicant and published by the office in a newspaper of general circulation in the locality of the conference at least two weeks prior to the scheduled conference date. The informal conference shall be held within a reasonable time after close of the comment periods specified under subsections (3) and (4) of this section but no later than thirty days after the close of said periods. The office may arrange with the applicant, upon request by any person who has submitted objections, comments, or a request for an informal conference, access to the proposed mining area for the purpose of gathering information relevant to the proceedings. An electronic or stenographic record shall be made of the informal conference, unless waived by all parties thereto. Such record shall be maintained by the office and shall be accessible to the parties until final release of the applicant's performance bond. In the event that all persons requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

Source: L. 79: Entire article added, p. 1272, § 1, effective July 1. L. 92: Entire section amended, p. 1954, § 61, effective July 1.

34-33-119. Permit application decisions of the office - appeals. (1) If an informal conference has been held pursuant to section 34-33-118 (6), any party thereto may submit additional information or comments to the office for a period of twenty days following the conference. The office shall issue a proposed decision, granting or denying the permit in whole or in part, no earlier than twenty days and no later than sixty days after the informal conference. The office may, for good cause shown, extend the time for the proposed decision up to an additional sixty days if the application is unusually complex or controversial or if significant snow cover prevents adequate on-site inspection.

(2) If there has been no informal conference pursuant to section 34-33-118 (6), the office shall issue a proposed decision, granting or denying the permit in whole or in part, within one hundred twenty days of the filing of the application. The office may, for good cause shown, extend the time for the proposed decision up to an additional sixty days if the application is unusually complex or controversial or if significant snow cover prevents adequate on-site inspection.

(3) The proposed decision of the office under subsection (1) or (2) of this section shall be in writing, and a copy thereof shall be furnished to the applicant and all persons who have objected to or submitted comments on the application. If the proposed decision is to deny the application in whole or in part, the office shall set forth specific reasons for the proposed decision. If the proposed decision is to grant the application in whole or in part or with modifications or stipulations, the modifications and stipulations and reasons for the decision shall accompany the notice of proposed decision.

(4) The office shall publish notice of the proposed decision in a newspaper of general circulation in the locality of the surface coal mining operations once a week for two weeks following issuance of the proposed decision. Any person with an interest which may be adversely affected by the proposed decision may request a formal hearing before the board on the proposed decision. Such request must be made within thirty days of first publication of the proposed decision of the division, be in writing, and state with reasonable specificity the reasons for the request and the objections to the proposed decision.

(5) If a formal hearing is requested, the board shall hold such hearing in an appropriate location no later than thirty days after said request and shall notify the applicant and any

person requesting said hearing of the date, time, and location of said hearing. The board shall also publish notice of the proposed hearing in a newspaper of general circulation in the locality of the hearing. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., and shall be adjudicatory in nature. No person who presided at a conference under section 34-33-118 (6) shall either preside at the hearing or participate in the decision thereon in any administrative appeal therefrom. The board may render its decision at the close of the hearing and must, in any event, render a decision within thirty days after the hearing. The board shall issue and furnish the applicant and all persons who participated in the hearing with a copy of the written decision, reversing, affirming, or modifying the proposed decision of the office, and stating the reasons therefor. The decision of the board shall be implemented by the office within five days after the written decision of the board.

(6) If no formal hearing is requested pursuant to subsection (4) of this section, the office shall issue and implement the proposed decision as final within five days after the close of the thirty-day period provided by subsection (4) of this section for filing a request for a formal hearing.

(7) When a formal hearing is requested pursuant to subsection (4) of this section, the board may grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits in the final determination of the proceeding; and

(c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(8) For the purpose of such hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each formal hearing required by this section shall be made, and a transcript shall be made available on request to any party or by order of the board.

(9) If any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector is aggrieved by the decision of the board or if the office fails to act within the time limits specified in this article, such applicant or person shall have the right to appeal in accordance with section 34-33-128.

Source: L. 79: Entire article added, p. 1273, § 1, effective July 1. **L. 92:** (1) to (6) and (9) amended, p. 1955, § 62, effective July 1.

34-33-120. Environmental protection performance standards. (1) Any permit issued under this article shall require that the surface coal mining and reclamation operations meet all applicable performance standards of this article.

(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require such operations to:

(a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(b) Restore land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution which would be contrary to state or federal laws, rules, or regulations, and so long as the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is not violative of federal, state, or local law;

(c) Except as provided in subsection (3) of this section with respect to all surface coal mining and reclamation operations, backfill, compact where needed to provide stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land, eliminating all highwalls, spoil piles, and depressions unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this article; except that, in surface coal mining which is carried out at the same location over a substantial period of time where the operations transect the coal deposit, and where the thickness of the coal deposits relative to the volume of the overburden is large, and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, where needed, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; except that in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate original contour, backfill, grade, and compact, where needed, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and except that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and shall be revegetated in accordance with the requirements of this article;

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operations to effectively control erosion and attendant air and water pollution;

(e) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil, and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except that, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation;

(f) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(g) Unless exempted by section 34-33-114 (4) (b), for all prime farmlands as identified in section 34-33-110 (2) (q) to be mined and reclaimed, comply with specifications for soil removal, storage, replacement, and reconstruction to be established by the secretary of the United States department of agriculture, and the operator shall be required, as a minimum, to:

(I) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(II) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil,

and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(III) Replace and regrade the root zone material described in subparagraph (II) of this paragraph (g) with proper compaction and uniform depth over the regraded spoil material; and

(IV) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (I) of this paragraph (g);

(h) Create, if authorized in the approved reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(I) The size of the impoundment is adequate for its intended purposes;

(II) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566, 16 U.S.C. sec. 1006;

(III) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(IV) The level of water will be sufficiently stable for its intended use;

(V) Final grading will provide adequate safety and access for proposed water users; and

(VI) Such water impoundments will not result in the diminution of the quality of water or the quantity of water available to water right holders for agricultural, industrial, recreational, or domestic uses;

(i) Conduct any augering operation associated with surface coal mining in a manner to maximize recoverability of coal reserves remaining after the mining and reclamation operations are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the office determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety; except that the office may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(I) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) Preventing or removing water from contact with toxic producing deposits;

(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses;

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering groundwaters and surface waters;

(II) (A) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) Constructing any siltation structures pursuant to sub-subparagraph (A) of this subparagraph (II) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(III) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the office. The office may approve the retention of sediment ponds as permanent impoundments if all requirements of paragraph (h) of this subsection (2) are met.

(IV) Restoring recharge capacity of the mined area to approximate premining conditions;

(V) Avoiding channel deepening or enlargement resulting from the discharge of water from mines;

(VI) Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors;

(VII) Taking such other actions reasonably related to the purposes of this paragraph (j) as the office may prescribe for good cause shown;

(k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers and through the use of incombustible and impervious materials if necessary and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this article;

(l) Refrain from surface coal mining within five hundred feet, measured horizontally, from active and abandoned underground mines in order to prevent breakthroughs and to protect the health and safety of miners; except that the office shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the office and by the United States mine safety and health administration, or its successor, and if such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection 515 (f) of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of groundwaters or surface waters and that contingency plans are developed to prevent sustained combustion;

(o) Ensure that explosives used in connection with the extraction of coal by surface methods are used only in accordance with existing state and federal law and blasting regulations promulgated by the board, in consultation with appropriate state agencies, which shall include provisions to:

(I) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every business or residence located within one-half mile of the proposed blasting site and by providing daily notice to resident occupants in such areas prior to any blasting or notice of less frequency as each resident occupant in such areas shall approve in writing;

(II) Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(III) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of groundwaters or surface waters outside the permit area;

(IV) Require that all blasting operations be conducted by trained and competent persons certified under a program which meets the minimum criteria established by applicable law;

(V) Provide that, upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or

permittee shall conduct a preblasting survey of such structures and submit the survey to the office and a copy to the resident or owner making the request. The area of the survey shall be decided by the office and shall include such provisions as the board shall promulgate.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; except that, where the applicant proposes to combine surface coal mining operations with underground mining to assure maximum practical recovery of the mineral resources, the board or office may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining prior to reclamation:

(I) If the board or office finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) The proposed underground mining is necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(C) The applicant has satisfactorily demonstrated that the plan or revision for the underground mining activities conforms to applicable local and state requirements for underground mining and that the permits necessary for the underground mining activities have been issued by the appropriate authorities;

(D) The areas proposed for the variance have been shown by the applicant to be necessary for the proposed underground mining;

(E) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article;

(F) Provisions for the off-site storage of spoil will comply with paragraph (v) of this subsection (2);

(II) If the board has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this article:

(III) If variances granted under the provisions of this paragraph (p) are to be reviewed by the office not more than three years from the date of issuance of the variance; and

(IV) If liability under the bond filed by the applicant with the office pursuant to section 34-33-113 (2) will continue for the duration of the underground mining activities and until the requirements of this subsection (2) and section 34-33-125 have been fully complied with;

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, or damage to fish or wildlife or their habitat or to public or private property;

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(s) Establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the postmining land use specified in the approved reclamation plan;

(t) Assume responsibility for successful revegetation, as required by paragraph (s) of this subsection (2), for a period of five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (s) of this subsection (2); except that, in those areas or regions of the state where the annual average precipitation is twenty-six inches or less, the operator's assumption of responsibility and liability will extend for a period of ten years after the last year of augmented seeding, fertilizing, irrigation, or other work; except that, when the board approves a long-term, intensive, agricultural postmining land use, the applicable five-year or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term, intensive, agricultural postmining land use; and except that, when the board

issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the office may grant exception to the provisions of paragraph (s) of this subsection (2);

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations and require that such operations not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(v) Place all excess spoil material resulting from surface coal mining and reclamation operations in such a manner that:

(I) The spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(II) The areas of disposal are within the bonded permit areas and all vegetative matter shall be removed immediately prior to spoil placement;

(III) The appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement;

(IV) The disposal area does not contain springs, natural watercourses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(V) If placed on a slope, the spoil is placed upon the most moderate slope of those upon which, in the judgment of the division, the spoil could be placed in compliance with all of the requirements of this article and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(VI) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size is constructed to prevent mass movement;

(VII) The final configuration will be compatible with the natural drainage pattern and surroundings and suitable for the proposed postmining land use;

(VIII) The design of the spoil disposal area is certified by a qualified licensed professional engineer in conformance with professional standards; and

(IX) All other provisions of this article are met;

(w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological, and other characteristics of the site;

(x) To the extent possible using the best technology currently available, minimize disturbances from and adverse impacts of the surface coal mining operations on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable; and

(y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such a distance as the office shall determine shall be retained in place as a barrier to slides and erosion.

(3) (a) When an applicant meets the requirements of paragraphs (b) and (c) of this subsection (3), a permit may be granted for surface coal mining operations without regard to the requirement to restore to approximate original contour set forth in paragraph (c) of subsection (2) of this section or subparagraph (II) or (III) of paragraph (a) of subsection (4) of this section if surface coal mining operations will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subparagraph (I) of paragraph (c) of this subsection (3)), by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accordance with the requirements of this subsection (3).

(b) In cases where an industrial, a commercial, an agricultural, a residential, or a public use including a recreational facility is proposed for the postmining use of the affected land, the office shall grant a permit for a surface coal mining operation of the nature described in paragraph (a) of this subsection (3) if:

(I) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(II) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:

- (A) Compatible with adjacent land uses;
- (B) Obtainable according to data regarding expected need and market;
- (C) Assured of investment in necessary public facilities;
- (D) Supported by commitments from public agencies where appropriate;
- (E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the surface coal mining and reclamation operations with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(III) The proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs;

(IV) The office provides the board of county commissioners, of the county in which the land is located, and any state or federal agency which the office determines to have an interest in the proposed use an opportunity of not more than sixty days to review and comment on the proposed use; and

(V) All other requirements of this article will be met.

(c) In granting any permit pursuant to this subsection (3), the office shall require that:

(I) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(II) The reclaimed area be stable;

(III) The resulting plateau or rolling contour drain inward from the outslopes except at specified points;

(IV) No damage be done to natural watercourses;

(V) Spoil will be placed on the mountaintop bench as is necessary to achieve the proposed postmining land use; except that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of paragraph (v) of subsection (2) of this section;

(VI) Stability of the spoil retained on the mountaintop be ensured; and

(VII) All other requirements of this article will be met.

(d) The board shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection (3).

(e) All permits granted under the provisions of this subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(4) (a) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; except that the provisions of this subsection (4) shall not apply to surface coal mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or in which an operator is in compliance with the provisions of subsection (3) of this section:

(I) Ensure that, when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; except that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph (c) of subsection (2) of this section or subparagraph (II) of this paragraph (a) shall be permanently stored pursuant to paragraph (v) of subsection (2) of this section.

(II) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, which material shall maintain stability following the surface coal mining and reclamation operations.

(III) The operator shall not disturb land above the top of the highwall unless the board or office finds that such disturbance will facilitate compliance with the environmental

protection standards of this section; except that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(b) For the purposes of this subsection (4), the term “steep slope” means any slope above twenty degrees or such lesser slope as may be determined by the board or office after consideration of soil, climate, and other characteristics of a region.

(5) (a) The board shall establish procedures pursuant to which it may permit variances for the purposes set forth in paragraph (c) of this subsection (5): If the watershed control of the area is improved; and if complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following the surface coal mining and reclamation operations.

(b) When an applicant meets the requirements of paragraphs (c) and (d) of this subsection (5), a variance from the requirement to restore to approximate original contour set forth in subparagraph (II) of paragraph (a) of subsection (4) of this section shall be granted for surface coal mining if the owner of the surface knowingly requests in writing, as a part of the permit application, or application for permit revision, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, an agricultural, a commercial, a residential, or a public use, including a recreational facility, in accordance with the provisions of paragraphs (c) and (d) of this subsection (5).

(c) Before granting a variance pursuant to this subsection (5), the board or office shall determine that:

(I) The proposed postmining land use of the affected land will be an equal or better economic or public use, after consultation with appropriate land use planning agencies in such matter, and that such use is designed and certified by a qualified licensed professional engineer in conformance with professional standards established to ensure the stability, drainage, and configuration necessary for the proposed postmining land use; and

(II) After approval of the appropriate state environmental agencies, the watershed of the affected land will be improved.

(d) In granting a variance pursuant to this subsection (5), the board or office shall require that only such amount of spoil be placed off the mine bench as is necessary to achieve the proposed postmining land use, ensure stability of the spoil retained on the bench, and meet all other requirements of this article and shall ensure that all spoil placements off the mine bench comply with paragraph (v) of subsection (2) of this section.

(e) The board shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection (5).

(f) All variances granted under the provisions of this subsection (5) shall be reviewed not more than three years from the date of issuance of the variance, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(6) Any additional criteria, mining or reclamation measures, or other conditions which the office requires the operator to meet, satisfy, or undertake in connection with the issuance, revision, or transfer of permits or in connection with the conduct of a surface coal mining operation shall be based upon good cause shown by the office, taking into consideration the specific conditions at the site, and shall bear a reasonable relationship to the purposes and provisions of this article. Any applicant or operator shall have the right, at any regular meeting of the board, upon proper notice, to seek the informal opinion of the board concerning any request or requirement of the office for such additional criteria, mining or reclamation measures, or other conditions, and such informal opinion of the board shall not be binding upon any of the parties.

Source: **L. 79:** Entire article added, p. 1275, § 1, effective July 1. **L. 92:** (2)(i), (2)(j)(III), (2)(j)(VII), (2)(l), (2)(o)(V), IP(2)(p), (2)(p)(I), (2)(p)(III), (2)(p)(IV), (2)(t), (2)(y), IP(3)(b), (3)(b)(IV), (3)(c), (4)(a)(III), (4)(b), (5)(c), (5)(d), and (6) amended, p. 1956, § 63, effective July 1. **L. 2004:** (2)(v)(VIII) and (5)(c)(I) amended, p. 1315, § 68, effective May 28.

Cross references: For the “Surface Mining Control and Reclamation Act of 1977”, see 30 U.S.C. 1201 et seq.

34-33-121. Surface effects of underground coal mining. (1) The board shall promulgate rules and regulations directed toward the surface effects of underground coal mining, embodying the requirements of this section and in accordance with the procedures of this article and the rules and regulations promulgated pursuant to this article; except that, in adopting any rules and regulations, the board shall consider the distinct difference between surface coal mining and underground coal mining.

(2) Each permit issued under this article and relating to underground coal mining shall require the operator to:

(a) (I) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner.

(II) If material damage results from subsidence caused by underground coal mining operations to any occupied residential dwelling and related structures or any noncommercial building, the operator of the underground coal mining operations conducted on or after April 7, 1995, shall either:

(A) Promptly repair the damage by rehabilitating, restoring, or replacing the damaged occupied residential dwelling and related structures or noncommercial building; or

(B) Compensate the owner of the damaged occupied residential dwelling and related structure or noncommercial building in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable, premium-prepaid insurance policy.

(III) Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed for the conduct of the underground coal mining;

(c) Fill or seal exploratory holes no longer necessary for underground coal mining, maximizing, to the extent technologically and economically feasible, return of mine and processing waste, tailings, and any other waste incident to the underground coal mining activities, the mine workings, or excavations;

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary, and assure that the leachate will not degrade, below water quality standards established pursuant to applicable federal and state law, surface water or groundwaters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria contained in applicable state and federal law, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(f) Establish on regraded areas and all other affected lands, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal, in extent of cover, to the natural vegetation of the area;

(g) Protect off-site areas from damages which may result from such underground coal mining activities;

(h) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to the health and safety of the public;

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of surface water and groundwater systems both during and after underground coal mining and during reclamation by:

(I) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) Preventing or removing water from contact with toxic producing deposits;

(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses;

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering groundwaters and surface waters; and

(II) Conducting surface activities incident to underground coal mining so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(j) With respect to other surface impacts not specified in this subsection (2), including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 34-33-120 for such effects which result from surface coal mining operations; except that the board or office shall make modifications in the requirements imposed by this paragraph (j) as are necessary to accommodate the distinct difference between surface and underground coal mining;

(k) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of resources where practicable;

(l) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(3) In order to protect the stability of the affected land, the office, after consultation with the operator and the office of active and inactive mines, shall order an immediate cessation of those portions of underground coal mining activities which are found in violation of section 34-24-109 or 34-48-102 or which are adjacent to permanent streams if the office finds an imminent danger to the inhabitants of urbanized areas, cities, towns, and communities.

(4) The provisions of this article relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface activities and impacts incident to underground coal mining with modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining.

Source: L. 79: Entire article added, p. 1285, § 1, effective July 1. L. 88: (3) amended, p. 1437, § 37, effective June 11. L. 92: (2)(j) and (3) amended, p. 1960, § 64, effective July 1. L. 95: (2)(a) amended, p. 148, § 4, effective April 7.

34-33-122. Inspections and monitoring. (1) For the purposes of administering and enforcing any permit under this article or of determining whether any person is in violation of any requirement of this article, the board shall require permittees to establish and maintain records of information relative to surface coal mining and reclamation operations which the board deems necessary in order for it or the office to monitor such operations.

(2) For those surface coal mining and reclamation operations which affect or potentially affect surface water and groundwater, on or off the site, the office shall, to the extent it deems necessary and after consultation with the division of water resources, require the permittee to:

(a) Establish monitoring sites to record the effect of the operations on the level and amount of such water;

(b) Maintain records of well logs and borehole data;

(c) Establish such monitoring sites to record precipitation in the area of the surface coal mining operation.

(3) The office shall require such monitoring of surface and groundwater quality, both on and off the site, as it deems necessary to determine compliance by permittees with the water quality provisions of this article.

(4) (a) The authorized representative of the board or office, upon presentation of appropriate credentials, shall have the power to enter at reasonable times, and without delay, upon or through any surface coal mining and reclamation operations and to have access to and copy any record, wherever located, and to inspect any monitoring equipment or method of operation required under this article or any permit issued under this article.

(b) Such inspections shall occur on an irregular basis, during times of operation at the mine, averaging not less than one partial inspection per month and one complete inspection per calendar quarter for each permitted surface coal mining and reclamation operation. Inspections may occur at any time at sites if a surface coal mining operation does not have a valid permit under this article or if there is reason to believe in a particular instance that significant environmental harm exists.

(c) Such inspections shall occur without prior notice to the permittee or his agents or employees, except for necessary on-site meetings with the permittee, and shall include the filing of inspection reports on forms approved by the board.

(5) Each permittee shall conspicuously maintain at the entrances to his surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and telephone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(6) Upon detection of a violation of any requirement of this article during an inspection, the authorized representative of the board or office shall forthwith issue a notice of violation to the operator in accordance with section 34-33-123.

(7) Any person who is or may be adversely affected by a particular surface coal mining operation may request that an inspection for violations be held. Such request shall be acted upon by the office if it is in writing and if it contains sufficient basis for the allegation that a violation has occurred. When a state inspection is to be made as a result of such information, the office shall notify such person when the inspection is proposed to be carried out, and such person shall be allowed to accompany the inspector during the inspection if such person remains in the presence of and under the control, direction, and supervision of the inspector and if such person agrees to comply with all applicable state and federal safety rules and regulations.

(8) Copies of any records, reports, inspection materials, or information obtained under this article by the board, except information identified as confidential pursuant to the provisions of this article, shall be made immediately available to the public at the office of mined land reclamation's office and at a convenient place in the area of the surface coal mining and reclamation operations.

(9) No employee of the division performing any function or duty under this article shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection (9) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than twenty-five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 79: Entire article added, p. 1287, § 1, effective July 1. L. 81: (4)(b) amended, p. 1682, § 4, effective June 16. L. 92: (1), IP(2), (3), (4)(a), and (6) to (8) amended, p. 1961, § 65, effective July 1.

34-33-123. Enforcement - civil and criminal penalties. (1) When, on the basis of any inspection, an authorized representative of the office determines that any condition or practices exist at a surface coal mining operation which is subject to this article or that any operator is in violation of any requirement of this article or any permit condition required by this article, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, such authorized representative shall immediately order a cessation of surface coal mining and reclamation

operations or that portion thereof relevant to the condition, practice, or violation. Where such authorized representative finds that the ordered cessation of surface coal mining and reclamation operations will not completely abate the imminent danger or the significant imminent environmental harm, the representative shall, in addition to the cessation order, impose affirmative obligations on the operator requiring such operator to abate the imminent danger or the significant imminent environmental harm. The order shall specify a reasonable time in which such abatement shall be accomplished.

(2) When, on the basis of any inspection, an authorized representative of the office determines that any operator is in violation of any requirement of this article or any permit condition required by this article, but such violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant imminent environmental harm to land, air, or water resources, such authorized representative shall issue a notice of violation to the operator or a designated agent of the operator fixing a reasonable time, but not more than ninety days, for the abatement of the violation.

(3) If the operator who is issued a notice of violation under subsection (2) of this section fails to abate the violation within the abatement period as originally set or subsequently extended, for good cause shown and upon written finding to that effect, the authorized representative of the office shall immediately order a cessation of the surface coal mining and reclamation operations or that portion thereof relevant to the violation.

(4) Each notice of violation and cessation order issued pursuant to this section shall be on a written form approved by the board, shall be signed by the person issuing it, and shall set forth with reasonable specificity the nature of the violation, including a reference to the provisions of the permit, statute, or regulation allegedly violated, the steps necessary to abate the violation in the most expeditious manner possible, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. The notice of violation or cessation order shall also inform the operator that a civil penalty may be assessed for the violation, if any, and that the operator has the right to have review of the notice or order in public hearing before the board in accordance with section 34-33-124. The procedure which the operator must follow to obtain such a hearing on any matters contained in the notice of violation or cessation order shall be included in the notice or order. Each notice of violation or cessation order shall be served in a timely fashion on the operator, through his designated agent or management personnel at the mine, in person or by certified mail, return receipt requested.

(5) Except as set forth in subsection (6) of this section, cessation orders issued under this section shall remain in effect until the condition, practice, or violation has been abated or until vacated, modified, or terminated in writing by an authorized representative of the office or by the board. An authorized representative of the office may vacate, modify, or terminate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously fixed was not caused by lack of diligence on the part of the operator. An authorized representative of the office shall immediately terminate a cessation order by written notice to the permittee when such representative determines that all conditions, practices, or violations listed in the order have been abated.

(6) Any notice of violation or cessation order issued pursuant to this section which requires cessation of mining, expressly or by necessary implication, shall automatically expire thirty days after service of the notice or order to the operator unless an informal hearing on the cessation of mining portion of the notice or order is held within such time at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. Such hearing shall be presided over by the authorized representatives of the office and pursuant to such reasonable procedural rules as the board may adopt by regulation. The office shall either affirm, modify, vacate, or terminate the notice or order or grant temporary relief therefrom. The authorized representative of the office who originally ordered the cessation of mining shall not take part in any such decision. Such hearings may be waived by the operator to whom the order was issued, and the holding of or failure to hold such a hearing shall not affect such operator's right to board review under section 34-33-124.

(7) When the office determines that a pattern of violations of any requirements of this article or any permit conditions required by this article exists or has existed and that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this article or any permit conditions or that such violations are willfully caused by the permittee, the office shall forthwith issue an order to the permittee to show cause why the permit should not be suspended or revoked and shall provide opportunity for a public hearing before the board to be held in accordance with section 34-33-124 and pursuant to such rules and regulations the board may adopt.

(8) (a) Any operator who violates any permit condition or who violates any other provision of this article may be assessed a civil penalty by the division; except that, if such violation leads to the issuance of a cessation order under subsection (1) or (3) of this section, the civil penalty shall be assessed. Such penalty shall not exceed five thousand dollars for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(b) The office shall notify the operator in writing of the proposed amount of any civil penalty within thirty days after the issuance of a notice or order charging a violation. The operator shall have ten days after receipt of the proposed penalty within which to request, on a written form approved by the board, an assessment conference in which all relevant information concerning the violation and penalty, including all information which the operator may submit, shall be reviewed by the operator or an authorized representative and a conference officer who shall be an authorized representative of the office.

(c) If the issues are resolved at the settlement conference, the conference officer shall prepare a settlement agreement, on a form approved by the board, which agreement shall be signed by the conference officer or his authorized representative and the operator charged with the violation. The settlement agreement shall provide, among other things, that, by paying the penalty as agreed, the operator waives all further right to review of the violation or penalty. The settlement agreement shall also require that the penalty, as agreed to, shall be paid within a certain time not to exceed thirty days from the date the agreement is signed by both parties. The settlement agreement shall not be effective if it is not signed by the operator or his authorized representative at the conference or within ten days thereafter.

(d) If the operator does not request a settlement conference, if a settlement conference is requested and the issues are not resolved there, or if the penalty agreed to in the settlement conference is not paid within the prescribed time, the office shall order the penalty fixed at whatever amount it deems appropriate based on the criteria set forth in paragraph (a) of this subsection (8) and on all relevant information which was received at the assessment conference, if held, and it shall give the operator written notice of the amount of the fixed penalty. The notice and order shall be on a form approved by the board, shall require payment of the fixed penalty within thirty days after the receipt of the notice and order by the operator, and shall state the procedure which the operator must follow to obtain a hearing before the board on the fact of the violation or the penalty. The notice and order shall be served on the operator or a designated agent of the operator no later than one hundred twenty days after the date the notice or order describing the violation was originally issued.

(e) Failure of the operator to forward the amount of the fixed penalty to the office and to request a public hearing in accordance with paragraph (f) of this subsection (8) shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(f) If the operator wishes to contest either the amount of the fixed penalty or the fact of the violation, the operator shall forward the amount of the fixed penalty to the office within thirty days after receipt of notice thereof for placement in an escrow account and request a public hearing before the board. Such hearing shall be held in accordance with section 34-33-124, and, when appropriate, the board shall consolidate such hearing with other proceedings under section 34-33-124. After such a public hearing has been held, the board

shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the civil penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Failure of the operator to pay the civil penalty ordered by the board within thirty days after such order is issued shall result in a waiver of all legal rights to contest the violation or the amount of penalty under section 34-33-128.

(g) If, after board review or judicial review of the fixed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the board shall, within thirty days of such determination, remit the appropriate amount to the operator with interest at the rate prevailing in the escrow account established under paragraph (f) of this subsection (8).

(h) Civil penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the board in the district court of this state for the district in which any of the affected land is located or in such other district agreeable to all parties to such action.

(i) Any operator who fails to correct a violation for which a notice or cessation order has been issued under this section within the period permitted for its correction, which period shall not end until the entry of an order of the court, in the case of any review proceedings under section 34-33-128 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation, shall be assessed a civil penalty of not less than seven hundred fifty dollars for each day during which such failure or violation continues.

(9) Any operator who willfully and knowingly violates a condition of a permit or fails or refuses to comply with any order issued under this section or any order incorporated in a final decision issued by the board under this article, except a notice and order issued under paragraph (d) of subsection (8) of this section or an order issued under paragraph (f) of subsection (8) of this section shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(10) Whenever a corporate operator violates a condition of a permit or fails or refuses to comply with any order issued under this section or any order incorporated in a final decision issued by the board under this article, except a notice and order issued under paragraph (d) of subsection (8) of this section or an order issued under paragraph (f) of subsection (8) of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon an operator under subsections (8) and (9) of this section.

(11) Whoever knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this article or any order or decision issued by the board or office under this article shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(12) The board or office may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of this state for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has its principal office, whenever such permittee or an agent of such permittee violates or fails or refuses to comply with any order or decision issued by the board or office under this article, or interferes with, hinders, or delays the board or office in carrying out the provisions of this article, or refuses to admit an authorized representative of the office to the mine, or refuses to permit inspection of the mine by such representative, or refuses to furnish any information or report requested by the office or board in furtherance of the provisions of this article, or refuses to permit access to, and copying of, such records as the office or board determines necessary in carrying out the provisions of this article. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in

accordance with rule 65 of the Colorado rules of civil procedure. Any relief granted by the court to enforce an order based on a violation or failure or refusal to comply with any order or decision issued by the board or office under this article shall continue in effect until the completion or final termination of all proceedings for review of such order under this article, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(13) (a) When the office determines that it improvidently issued a permit that should not have been issued under the criteria set forth in section 34-33-114 (3), it shall implement remedial measures, including development of a cooperative plan with the permittee, imposition of a condition on the permit to correct the reason that the permit should not have been issued under section 34-33-114 (3), or issuance of an order to the permittee to show cause why the permit should not be suspended or revoked.

(b) When an order to show cause is issued pursuant to this subsection (13), the order shall include the reasons for the finding that the permit was improvidently issued and shall provide an opportunity for a public hearing before the board to be held in accordance with section 34-33-124 and pursuant to rules the board may adopt. Rules adopted pursuant to this section shall be no less effective than the federal rules provided in 30 CFR 773.21.

Source: **L. 79:** Entire article added, p. 1288, § 1, effective July 1. **L. 81:** (4) and (8)(d) amended, p. 1682, § 5, effective June 16. **L. 92:** (1) to (3), (5) to (7), (8)(b), (8)(d) to (8)(f), (11), and (12) amended, p. 1962, § 66, effective July 1. **L. 95:** (13) added, p. 149, § 5, effective April 7.

34-33-124. Review by board. (1) (a) An operator issued any notice of violation or cessation order pursuant to the provisions of section 34-33-123 or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order may request review thereof by the board within ninety days after the issuance of the notice or order or within ninety days after its modification, vacation, or termination. Such request for review may include a request for a hearing to enable the operator or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. Upon receipt of such request for a hearing, the hearing shall be held and, prior to such hearing, the board shall cause an investigation to be made as it deems appropriate. The filing of a request for review under this paragraph (a) shall not operate as a stay of any order or notice.

(b) The operator, any other persons requesting a hearing, and all other persons expressing an interest shall be given written notice of the time and place of any hearing requested under this section at least five days prior to such hearing. Notice of such hearings shall also be included in the monthly mailings of the division. Any such hearing shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) Upon receiving the report of any investigation and after any public hearing under paragraph (b) of subsection (1) of this section, the board shall make findings of fact and shall issue a written decision, incorporating therein its findings and an order vacating, affirming, modifying, or terminating the notice of violation or cessation order or the modification, vacation, or termination of such notice or order reviewed. Where the request for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to section 34-33-123, the board shall issue a written decision within thirty days of the receipt of the request for review unless temporary relief has been granted by the board pursuant to subsection (3) of this section, by the office pursuant to section 34-33-123 (6), or by the court pursuant to section 34-33-128 (3).

(3) Pending completion of the investigation and hearing under this section, the operator or any other party may file with the board a written request that the board grant temporary relief from any notice or order, together with a detailed statement giving reasons for granting such relief. The board shall issue an order or decision granting or denying such relief expeditiously; except that, where the operator requests relief from an order for cessation of surface coal mining and reclamation operations issued pursuant to section

34-33-123, the order or decision on such a request shall be issued within five days of its receipt. The board may grant such relief under such conditions as it may prescribe if:

(a) An informal hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(b) The party requesting temporary relief shows that there is substantial likelihood that the findings of the board will be favorable to him; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air, or water resources.

(4) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 34-33-123 (7), the board shall hold a public hearing after giving written notice of the time, place, and date thereof to the permittee. Advance notice of such hearing shall be included in the monthly mailings of the office. Any such hearing shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Within sixty days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the board suspends or revokes the permit, the permittee shall immediately cease those surface coal mining operations on the permit area as specified by the board and shall complete reclamation within a period specified by the board, or the board shall declare the performance bonds for the operation as forfeited. Proceeds of forfeited bonds shall be available to the office and shall be used by the office for reclamation of the area covered by the bond.

(5) Whenever an order is issued under this section or as a result of any administrative proceeding under this article, at the request of any party to such proceeding, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) which the board determines to have been reasonably incurred by such party for or in connection with his participation in such proceedings may be assessed against any party to the proceedings, as the board deems just and proper.

Source: L. 79: Entire article added, p. 1293, § 1, effective July 1. **L. 81:** (1)(b), IP(3), and (3)(b) amended, pp. 1683, 1684, §§ 6, 7, effective June 16. **L. 92:** (2) and (4) amended, p. 1965, § 67, effective July 1.

34-33-125. Release of performance bonds or deposits. (1) The permittee may file a request with the office for the release of all or part of a performance bond or deposit. The permittee shall submit with such request a copy of a publication to be placed by the permittee at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such publication shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, the operator shall, prior to the filing of a request for release of performance bond or deposit, provide written notice of such operator's intention to seek release from the bond to adjoining property owners and appropriate local government bodies, municipalities, regional planning commissions, boards of county commissioners, county planning agencies, sewage and water treatment authorities, and water conservancy and water conservation districts in the locality in which the surface coal mining operations took place, and copies of such notifications shall be submitted to the office within thirty days of the filing of any request for release under this section.

(2) Upon receipt of a request for the release of a performance bond or deposit, the office shall, within thirty days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the results of inspections and monitoring conducted pursuant to section 34-33-122, the degree of difficulty to complete any remaining reclamation, and whether pollution of surface or subsurface water is occurring, the probability of continued pollution, and the estimated cost of abating such pollution. The written results of such inspection and

evaluation shall be made immediately available for public inspection in the offices of the office of mined land reclamation.

(3) Any person with a valid legal interest which might be adversely affected by release of the bond or any federal, state, or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to or comments upon the requested release from bond with the office within thirty days after the last publication of the notice required in subsection (1) of this section. Upon receipt of any such objections or comments, copies thereof shall be transmitted to the permittee.

(4) The office shall provide written notification to the permittee of its proposed decision to release or not release all or part of the performance bond or deposit together with written reasons for such proposed decision within sixty days from the date of completion of the inspection and evaluation as required in subsection (2) of this section. The office shall further publish written notice of its proposed decision once a week for two successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation and shall immediately provide written notification of its proposed decision by certified mail to the board of county commissioners of the county in which the surface coal mining operation is located.

(5) If no request for an adjudicatory hearing as provided in subsection (6) of this section is received within the time periods specified therefor, the proposed decision of the office shall be final.

(6) The board shall hold an adjudicatory hearing on the proposed decision of the office upon the receipt of a written request for hearing from any person with a valid legal interest which might be adversely affected by the proposed decision of the office or from the responsible officer or head of any federal, state, or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations. The request for an adjudicatory hearing must state with specificity the reasons why the hearing is requested and must be received within thirty days of issuance of the proposed decision of the office. Prior to the adjudicatory hearing, the board shall inform all interested parties of the time and place of the hearing and shall publish the date, time, and location of such hearing in a newspaper of general circulation in the locality of the surface coal mining operation for two consecutive weeks after receipt of a request for hearing. The board shall hold an adjudicatory hearing on the proposed decision of the office within thirty days of the receipt of any written request for such hearing and shall render a written decision affirming or reversing, in whole or in part, the decision of the office within thirty days following the conclusion of the adjudicatory hearing.

(7) The adjudicatory hearing on the proposed decision of the office shall be conducted pursuant to section 24-4-105, C.R.S., and, for the purpose of such hearing, the board shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials, and take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each adjudicatory hearing required by this article shall be made and a transcript made available on the request of any party to such hearing or by order of the board.

(8) Without prejudice to the rights of any person which might be adversely affected, the applicant, or the responsibilities of the office pursuant to this section, the office may hold an informal conference as provided in section 34-33-118 to resolve any written comments or objections on the request for release, if such conference concludes by the sixtieth day following the inspection and evaluation required in subsection (2) of this section.

(9) The bond or deposit shall be released, in whole or in part, if the office, or the board where an adjudicatory hearing is held pursuant to subsection (6) of this section, is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, according to the following schedule:

(a) Up to sixty percent of the bond or collateral for the applicable permit area shall be released when the operator completes backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan;

(b) An additional portion of the bond or collateral shall be released when revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the board or office shall retain that amount of the bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 34-33-120 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph (b) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 34-33-120 (2) (j) or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 34-33-110 (2) (g). Where a silt dam is to be retained as a permanent impoundment pursuant to section 34-33-120 (2) (h), a portion of the bond may be released under this paragraph (b) so long as provisions for sound future maintenance by the operator or the landowner have been made with the office.

(c) The remaining portion of the bond shall be released when the operator has successfully completed all surface coal mining and reclamation operations, but not before the expiration of the period specified for operator responsibility in section 34-33-120; except that no bond shall be fully released until all reclamation requirements of this article are fully met.

Source: L. 79: Entire article added, p. 1294, § 1, effective July 1. L. 92: (4) and (8) amended, p. 1895, § 3, effective May 29; (1) to (8), IP(9), and (9)(b) amended, p. 1965, § 68, effective July 1.

34-33-126. Designating areas unsuitable for surface coal mining. (1) (a) Upon petition pursuant to subsection (2) of this section, the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board determines, based upon competent and scientifically sound data and information derived from the data base and inventory system established in section 34-33-130 or from any other source, that reclamation of the subject area pursuant to the requirements of this article is not technically and economically feasible.

(b) Upon petition pursuant to subsection (2) of this section, a surface area may be designated unsuitable for all or certain types of surface coal mining operations if such operations will:

- (I) Be incompatible with state or local land use plans or programs;
- (II) Adversely affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
- (III) Adversely affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, such lands to include aquifer and aquifer recharge areas; or
- (IV) Affect natural hazard areas in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(c) Determination of the unsuitability of land for surface coal mining operations under this section shall be integrated as closely as possible with present and future land use planning, leasing, and regulation processes at the federal, state, and local levels.

(2) (a) Any person having an interest which is or may be adversely affected or any duly authorized governmental agency shall have the right to petition the board to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have such designation terminated. Any such petition which includes acreage identified in a pending permit application pursuant to the requirements of section 34-33-111 (1) (a) shall

be filed with the board prior to completion of the informal conference provided for in section 34-33-118 (6) concerning such pending permit application. If no such informal conference is requested with respect to such pending permit application, such petition shall be filed with the board on or before thirty days after the last publication of the notice provided for in section 34-33-118 (2). The petition shall be in writing, shall be directed to the board, and shall contain the following information:

(I) The name, address, and telephone number of the petitioner;

(II) The identification, including applicable range and township numbers, of the areas proposed for designation and a brief description of such areas. The petitioner shall make a good faith effort to identify the owners of record of surface and mineral interests in the land proposed for either designation or termination of designation and shall include a list of the names so obtained with the petition.

(III) The identification of the petitioner's interest which is or may be adversely affected;

(IV) Any allegations of fact with supporting evidence which would tend to establish the allegations.

(b) Within thirty days after receipt of the petition, the board shall notify the petitioner in writing as to the completeness or incompleteness of the petition. In the event the petition is deemed incomplete, the petitioner shall be notified in writing of the specific aspects of the petition which render it incomplete and be provided an opportunity to amend, revise, or otherwise make said petition complete.

(c) Within thirty days after the filing of a complete petition, the office shall make a determination of whether any identified coal resources exist in the area covered by the petition, whether the petition is frivolous, and, if the area or part thereof has been the subject of a previous unsuccessful petition to establish or terminate an unsuitability designation, whether any new factual allegations not contained in such previous petition are included in the petition. If the office determines that there are no identified coal resources in the area covered by the petition, the petition shall be returned to the petitioner with a statement of the finding. If the office determines that the petition is frivolous or that no new factual allegations are contained in the petition covering lands which were the subject of a previous unsuccessful petition, the office shall recommend to the board that the petition be dismissed and provide written notice to the petitioner of such recommendation. At its next regularly scheduled meeting following such recommendation of dismissal by the office, but in no event less than thirty days following notice to the petitioner of the office's recommendation, the board shall accept or reject the office's determination after providing the petitioner and other interested parties an opportunity to be heard at such meeting regarding the office's recommendation. If the board accepts the office's determination, the office shall promptly notify the petitioner that the petition has been dismissed and state the reasons therefor.

(d) Within thirty days after the filing of a complete petition, notice of the petition shall be sent by the office to the owners of record of all surface and mineral interests in the land included in such petition, and a copy of the petition shall be available at all times for inspection by the public in the office of the office of active and inactive mines. The office shall include a list of pending petitions in the monthly mailings of the office.

(e) Within ten months after the receipt of a complete petition, the board shall hold a public hearing in the locality of the affected area. At least one month prior to the date of public hearing, the board shall notify, in writing, the owners of all surface and mineral interests in the affected area regarding the time and place of the public hearing as well as the location where a copy of the subject petition may be examined. At least one month prior to the date of the public hearing, the board shall also publish, in a newspaper of general circulation in the area to be affected by the petition, a notice of the public hearing with a description of the area to be affected as well as the location where a copy of the petition may be examined.

(f) A copy of the petition shall be sent to the county clerk and recorder of each county affected by such petition for recording in the real property records of said county and shall be made available for inspection by the public.

(g) After the filing of a petition and no later than fifteen days before the public hearing, any person may intervene. A petition to intervene shall contain allegations and supporting evidence which tends to establish or refute the allegations contained in the petition.

(h) Within sixty days after the public hearing on the petition, the board shall issue and furnish to the petitioner and any other party to the hearing a written decision on the petition and the reasons therefor. Any decision of the board on the petition shall be sent to the county clerk and recorder of each county affected by such petition for recording in the real property records of such counties.

(3) Prior to designating any area as unsuitable for surface coal mining operations, the board shall prepare and make available for public inspection and copy, at least one month prior to the hearing provided for in paragraph (c) of subsection (2) of this section, a detailed statement on:

- (a) The potential coal resources of the area;
- (b) The demand for coal resources; and
- (c) The impact of such designation on the environment, the economy, and the supply of coal.

(4) The requirements of this section shall not apply to federal lands or to lands on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this article, or where substantial legal and financial commitments in such operations were in existence prior to January 4, 1977.

Source: L. 79: Entire article added, p. 1297, § 1, effective July 1. L. 92: (2)(c) and (2)(d) amended, p. 1968, § 69, effective July 1.

34-33-127. Public agencies, public utilities, and public corporations. Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations, which are subject to the requirements of this article, shall comply with the provisions of this article.

Source: L. 79: Entire article added, p. 1299, § 1, effective July 1. L. 92: Entire section amended, p. 1895, § 4, effective May 29.

34-33-128. Judicial review. (1) Any order or decision issued by the board in a civil penalty proceeding, or in a proceeding under section 34-33-126 to establish an unsuitability designation, or in any proceeding required to be conducted pursuant to article 4 of title 24, C.R.S., shall be subject to judicial review on or before thirty days after the date of such order or decision in accordance with subsection (2) of this section in the district court of this state for the district in which the surface coal mining operation is located. In the case of a proceeding to review an order or decision issued by the board under section 34-33-124, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment.

(2) The court shall hear such petition or complaint solely on the record made before the board. The findings of the board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the board for such further action as it may direct.

(3) In the case of a proceeding to review any order or decision issued by the board under this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(4) At the request of any party to a proceeding under this section, the court may assess costs and expenses, including attorney fees, against any party, as the court deems just and proper.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the board.

Source: L. 79: Entire article added, p. 1300, § 1, effective July 1.

34-33-129. Surface coal mining operations not subject to this article. (1) The provisions of this article shall not apply to any of the following activities:

(a) The extraction of coal by a landowner for such landowner's own noncommercial use from land owned or leased by said landowner; and

(b) (Deleted by amendment, L. 92, p. 1895, § 5, effective May 29, 1992.)

(c) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the board.

Source: L. 79: Entire article added, p. 1300, § 1, effective July 1. **L. 92:** Entire section amended, p. 1895, § 5, effective May 29.

34-33-130. Data inventory. (1) The board is hereby authorized and directed to cooperate with and seek assistance from state, county, and federal agencies and universities and research institutions in this state and to work in close cooperation with local planning units in order to establish a data base and an inventory system, drawing upon existing resources where possible, which will:

(a) Provide proper evaluation of the capacity of different land areas of the state to be reclaimed following surface coal mining operations;

(b) Be available to those making land use planning decisions concerning surface coal mining operations;

(c) Provide objective and scientific evaluation of fragile, historic, natural hazard, and renewable resource lands and lands listed in the Colorado natural areas registry or designated under the Colorado natural areas program.

(2) The board shall promulgate such rules and regulations which it deems necessary to establish such a data base and inventory system, and, in so doing, the board shall take into consideration those criteria and definitions which other federal and state agencies have adopted for use in determining lands unsuitable for mining.

(3) (a) The board may, at its discretion, appoint an advisory committee to assist it in establishing a data base and inventory system for surface coal mining operations. Such committee, if appointed, shall consist of experts in the areas of wildlife, plant ecology, natural areas, historic areas, reclamation, agriculture, coal geology, and land management planning and other areas as deemed necessary by the board.

(b) and (c) Repealed.

(4) The board is further authorized and directed to accept and seek grants and financial aid from the federal government and from private agencies for carrying out the purposes of this section.

Source: L. 79: Entire article added, p. 1301, § 1, effective July 1. **L. 86:** (3) amended, p. 424, § 55, effective March 26. **L. 88:** (3)(b) amended, p. 318, § 15, effective April 14. **L. 90:** (3)(b) and (3)(c) repealed, p. 334, § 24, effective April 3.

34-33-131. Informal opinion as to alluvial valley floors. Any person who proposes to engage in surface coal mining operations may, prior to making an application for a permit under this article, request that the board give an informal opinion on whether or not the area of land to be affected by such proposed operations is in, or adjacent to, an alluvial valley floor. Any such informal opinion shall be based upon sound scientific data, shall be in writing, and shall be advisory in nature.

Source: L. 79: Entire article added, p. 1301, § 1, effective July 1.

34-33-132. Special coordination and review process - site-specific agreements.

(1) The department and any person contemplating opening a surface coal mining operation in this state may, at their discretion, enter into one or more site-specific agreements to identify and coordinate local, state, and federal government jurisdiction and review of land use planning, environmental analysis, and socioeconomic evaluation, to establish coordinating procedures for required action, and to ensure that such procedures be undertaken in a timely, sequential manner. Any such agreements shall be consistent with the provisions of this article.

(2) Such site-specific agreements may include:

(a) The schedule for completion of data collection required for environmental, technical, and policy review; and

(b) The schedule for completion of evaluation, review, and comments by all parties.

(3) Such agreements may list all applicable laws, regulations, and ordinances of this state and its agencies, the federal government and its agencies, and of the county or counties in which the proposed operation will be situated. The department may, with the advice and concurrence of the board, develop rules and regulations to ensure relative uniformity in such agreements.

Source: L. 79: Entire article added, p. 1301, § 1, effective July 1.

34-33-133. Abandoned mine reclamation plan. (1) The office of active and inactive mines is authorized and directed to develop, in accordance with the provision of Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the rules and regulations thereunder, an abandoned mine reclamation program which may provide for, but need not be limited to, the following:

(a) Protection of public health, safety, general welfare, and property from the dangers and adverse effects of past mining practices;

(b) Acquisition, reclamation, and restoration of land and water resources previously degraded by the adverse effects of mining, including measures for the conservation and development of soil, water, woodland, fish and wildlife, recreation and tourism resources, and agricultural productivity;

(c) The protection, repair, replacement, construction, or enhancement of public facilities in communities affected by coal or other energy development.

(2) The office of active and inactive mines is authorized and directed to:

(a) Apply for, receive, and expend grant moneys or other funds for the development, administration, and fulfillment of the requirements of an abandoned mine reclamation program;

(b) Apply for, receive, and expend such funds legally available to Colorado from the abandoned mine reclamation fund established by Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended;

(c) Invite public inspection of, comment on, and involvement in the formulation of the abandoned mine reclamation program;

(d) Submit the abandoned mine reclamation program, after public review, to the secretary for approval and funding;

(e) Amend the approved abandoned mine reclamation program from time to time, after public review of the proposed amendments, as may be necessary or desirable.

Source: L. 79: Entire article added, p. 1302, § 1, effective July 1. **L. 92:** (2)(a) amended, p. 1896, § 6, effective May 29; entire section amended, p. 1968, § 70, effective July 1.

Cross references: For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq.

34-33-133.5. Colorado mine subsidence protection program - rules. (1) The board is authorized and directed to issue rules and regulations to develop a Colorado mine

subsidence protection program, which shall provide protection for owners of private residential structures against damages caused by land subsidence from underground coal mines. The program shall be operated in accordance with the provisions of Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the rules and regulations promulgated pursuant thereto. The board may assess and expend fees collected from participants who are insured under the program, and expend interest earned on such fees as necessary to defray administrative costs of the program. In its discretion, the board may delegate such power and responsibility, by rule-making, to the division.

(2) **Creation of trust.** The Colorado coal mine subsidence trust is hereby created as part of the board. Trust funds shall be held in custody by the state treasurer in a fund to be known as the Colorado coal mine subsidence trust fund, which fund is hereby created. Moneys granted to the state by the federal government for the purposes specified in subsection (1) of this section, together with all interest earned, shall be credited to such trust fund. The state treasurer shall invest trust assets in lawful investments. The trust funds shall be available to the board to carry out the purposes of the Colorado mine subsidence protection program established pursuant to subsection (1) of this section.

Source: L. 92: Entire section added, p. 1896, § 7, effective May 29.

Cross references: For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq.

34-33-134. Experimental practices. In order to encourage advances in coal mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the board, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 34-33-120 and 34-33-121. Such departures may be authorized if: The experimental practices are potentially more or at least as environmentally protective, during and after coal mining operations, as those required by promulgated standards; the coal mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded the public health and safety below that provided by promulgated standards.

Source: L. 79: Entire article added, p. 1302, § 1, effective July 1.

34-33-135. Civil actions. (1) Subject to the requirements of subsection (2) of this section, any person having an interest which is or may be adversely affected may commence a civil action on such person's own behalf to compel compliance with the provisions of this article against:

(a) Any person or governmental agency or instrumentality who is alleged to be in violation of any provision of this article or any rule or regulation promulgated or any order or permit issued pursuant to this article; or

(b) The board or office when there is alleged a failure of the board or office to perform any act or duty under this article which is not discretionary with the board or office.

(2) No action may be commenced under:

(a) Paragraph (a) of subsection (1) of this section prior to sixty days after the plaintiff has given notice in writing of the alleged violation, setting forth such matters as the board shall by regulation prescribe, to the attorney general, the board and office, and any alleged violator;

(b) Paragraph (b) of subsection (1) of this section prior to sixty days after the plaintiff has given notice in writing of the alleged violation, setting forth such matters as the board

shall by regulation prescribe, to the board and office and the attorney general; except that such action may be brought immediately after such notification of the alleged failure of the board or office complained of if such failure constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(2.5) The board or the office may intervene as a matter of right in any action commenced pursuant to paragraph (a) of subsection (1) of this section to which they are not otherwise a party.

(3) Any action initiated pursuant to this section shall be tried in such county as is provided by the Colorado rules of civil procedure.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines such award is appropriate. The court shall, if a temporary restraining order or injunction is sought, require the filing of a bond or equivalent security to the extent required by the Colorado rules of civil procedure.

(5) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this article or the regulations promulgated under this article or to seek any other allowable relief, including relief against the appropriate state agency.

(6) Any person who is injured in person or property through the violation by an operator of any rule or regulation promulgated or any order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, against such operator only in the county where said violation occurred. Nothing in this subsection (6) shall affect the rights established by or limits imposed under the workers' compensation laws of this state.

Source: **L. 79:** Entire article added, p. 1303, § 1, effective July 1. **L. 81:** (2.5) added, p. 1684, § 8, effective June 16. **L. 87:** (2)(b) amended, p. 1273, § 1, effective May 13. **L. 90:** (6) amended, p. 573, § 70, effective July 1. **L. 92:** IP(1), (1)(b), (2), and (2.5) amended, p. 1969, § 71, effective July 1.

34-33-136. Water rights. Nothing contained in this article shall be construed to affect or impair the rights and obligations attendant upon the ownership of water rights under Colorado water law.

Source: **L. 79:** Entire article added, p. 1304, § 1, effective July 1.

34-33-137. Reservation clause. Passage of this article shall not be deemed to be an admission by the state of Colorado as to the legality or constitutionality of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and shall not be construed to limit, waive, or otherwise affect the right of the state of Colorado, or its agencies, from contesting the constitutional or statutory validity of any part, section, provision, requirement, or regulation promulgated under such act, pursuant to which this article has been enacted.

Source: **L. 79:** Entire article added, p. 1304, § 1, effective July 1.

Cross references: For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq.

ARTICLE 34

Abandoned Mine Reclamation Program

- 34-34-101. Definitions.
- 34-34-102. Abandoned mine reclamation fund - project expenditures.

34-34-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Abandoned", with regard to mining operations, means lands that were subject to mining operations for which there is no continuing reclamation responsibility under state or federal laws and that have been abandoned or left in an inadequate reclamation status prior to:

(a) For coal mining operations, August 3, 1977, the date of enactment of the federal "Surface Mining Control and Reclamation Act of 1977";

(b) For hard rock mining operations, July 1, 1976, the date of enactment of the "Colorado Mined Land Reclamation Act", article 32 of this title.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Division" means the division of reclamation, mining, and safety or such agency as may lawfully succeed to the powers and duties of such division.

(4) "Hard rock" means an inanimate constituent of the earth in a solid, liquid, or gaseous state that, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material. For the purposes of this article, "hard rock" does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.

(5) "Mineral" means hard rock and coal.

(6) "Mining operations" means the development or extraction of a mineral from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation and the disposal of refuse from surface, underground, and in situ mining. The term includes the following operations on affected lands: Transportation, concentrating, milling, evaporation, and other processing. The term does not include: The exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the extraction of geothermal resources; or smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land.

(7) "Pre-law" means that no permit was issued pursuant to article 32, 32.5, or 33 of this title for a mining operation and no bond or other financial assurance covering the reclamation of the land affected by such mining operation exists.

Source: L. 2005: Entire article added, p. 690, § 1, effective July 1. **L. 2006:** (3) amended, p. 218, § 15, effective August 7.

Cross references: For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. 1201 et seq.

34-34-102. Abandoned mine reclamation fund - project expenditures. (1) The abandoned mine reclamation fund is hereby created in the state treasury. The fund shall consist of moneys received pursuant to section 34-33-133 (2) (a), moneys transferred from the severance tax trust fund pursuant to section 39-29-109.3 (1) (c), C.R.S., and interest earned on the investment of such moneys. Revenues in the fund shall not revert to the general fund. The fund shall be expended only for the purposes specified in this section. Appropriations from the fund shall be available for three successive state fiscal years.

(2) The division shall annually submit to the board a list of projects eligible to be reclaimed or safeguarded through expenditures from the fund. Project eligibility and selection shall be determined in accordance with current procedures applicable to the abandoned mine reclamation program established pursuant to section 34-33-133 and the following requirements:

(a) The board shall approve the expenditure of revenues from the fund for the purpose specified in this section after review by the board of county commissioners for the county in which the project is located; and

(b) The project shall be located where pre-law mining operations have occurred, the mining operations have been abandoned, and there is a high risk to the environment or public safety.

Source: L. 2005: Entire article added, p. 691, § 1, effective July 1. **L. 2008:** (1) amended, p. 1872, § 10, effective June 2.

Metal Mines

ARTICLE 40

Bureau of Mines

34-40-100.3 to 34-40-123. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor's note: This article was numbered as article 32 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 41

Mining Industrial Development Board

34-41-101 to 34-41-106. (Repealed)

Source: L. 74: Entire article repealed, p. 195, § 1, effective July 1.

Editor's note: (1) All real or personal property belonging to the mining industrial development board was transferred to and became the property of the state of Colorado on July 1, 1974.

(2) This article was numbered as article 34 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1974, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 42

Mining District Laws

34-42-101.	Mining district records - filed.	34-42-103.	Jury may view mining premises.
34-42-102.	Proof of customs and regulations admitted.	34-42-104.	Expenses.

34-42-101. Mining district records - filed. A copy of all the records, laws, and proceedings of each mining district, insofar as they relate to lode claims, shall be filed in the office of the county clerk and recorder of the county in which the district is situated, within the boundaries of the mining district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters contained in such record or proceeding. All such records of deeds and conveyances, laws, and proceedings of any mining district filed in the county clerk and recorder's office of the proper county prior to November 7, 1861, and transcripts thereof duly certified, whether such records relate to gulch claims, lode claims, building lots, or other real estate, shall have the like effect as evidence.

Source: R.S. p. 466, § 11. **G.L.** § 1807. **G.S.** § 2396. **R.S. 08:** § 4258. **C.L.** § 3382. **CSA:** C. 110, § 274. **CRS 53:** § 92-21-1. **C.R.S. 1963:** § 92-21-1.

34-42-102. Proof of customs and regulations admitted. In actions regarding mining claims, proof shall be admitted of the customs, usages, and regulations established and in

force in the mining districts embracing such claims; and such customs, usages, and regulations, when not in conflict with the laws of this state or of the United States, shall govern the decision in the action.

Source: L. 1887: p. 198, § 363. **Code 08:** § 397. **Code 21:** § 398. **Code 35:** § 398. **CRS 53:** § 92-21-2. **C.R.S. 1963:** § 92-21-2.

34-42-103. Jury may view mining premises. In all suits, actions, and proceedings brought in any court of this state involving title to, the right of possession of, or the mineral contained in any mine or mining claims, it is the duty of the court, at the trial of such suit, and upon the application of either party interested therein, to send the jury impaneled in the case, in a body, to view and inspect the premises. Each party to the suit shall have the privilege of nominating one person, to be approved by the court, to attend with the jury in their view and investigation of the premises in controversy, and such persons so selected and appointed by the court shall be authorized to act as guides to the jury, and to point out such features in the premises as it is desirable that the jury should see and answer all questions propounded by the jury; but such persons so selected shall not be at liberty to argue or discuss any questions involved in the case either with the jury or with each other in the presence of the jury; and if such persons violate the above provision, the court has the power to punish anyone so offending for contempt of court by a fine of not more than one hundred dollars or by imprisonment for not more than ten days in the county jail.

Source: L. 1893: p. 78, § 1. **Code 08:** § 206. **Code 21:** § 207. **Code 35:** § 207. **CRS 53:** § 92-21-3. **C.R.S. 1963:** § 92-21-3.

Cross references: For civil contempt, see C.R.C.P. 107.

34-42-104. Expenses. The expenses incurred in sending the jury to investigate mining premises, as provided in section 34-42-103, shall be paid by the parties to the suit in equal proportions, unless the demand for such investigation is made by one party and objected to by the other, in which case the court may apportion such expenses as may seem just and equitable in the particular case.

Source: L. 1893: p. 78, § 2. **Code 08:** § 207. **Code 21:** § 208. **Code 35:** § 208. **CRS 53:** § 92-21-4. **C.R.S. 1963:** § 92-21-4.

ARTICLE 43

Claims - How Located

34-43-101.	Length of lode claim.	34-43-111.	Top not to be followed beyond lines.
34-43-102.	Width of lode claim.	34-43-112.	Placer claim certificate - recording - manner of locating.
34-43-103.	Lode claim certificate - contents.	34-43-113.	Tunnel claim - recording.
34-43-104.	Location certificate void - when.	34-43-114.	Affidavit of annual labor, improvements, or payment of federal claim rental fee - effect of filing.
34-43-105.	Certificate shall contain but one location.	34-43-115.	Relocation by owner - conditions.
34-43-106.	Manner of locating claims.	34-43-116.	Relocation of abandoned claims.
34-43-107.	Marking boundaries.		
34-43-108.	To hold lode - crosscut - tunnel - adit.		
34-43-109.	Sixty days to sink discovery shaft.		
34-43-110.	What location includes - extralateral rights.		

34-43-101. Length of lode claim. The length of any lode claim located after June 1, 1874, may equal but not exceed fifteen hundred feet along the vein.

Source: L. 1874: p. 185, § 1. G.L. § 1811. G.S. § 2397. R.S. 08: § 4192. C.L. § 3278. CSA: C. 110, § 168. CRS 53: § 92-22-1. C.R.S. 1963: § 92-22-1.

ANNOTATION

This section does not confine discovery shaft to any specific point along strike, hence the end lines need not be equidistant from the shaft. Taylor v. Parenteau, 23 Colo. 368, 48 P. 505 (1897); Enterprise Mining Co. v. Rico-Aspen Consol. Mining Co., 66 F. 200 (8th Cir. 1895), aff'd, 167 U.S. 108, 17 S. Ct. 762, 42 L. Ed. 96 (1897).

Valid location carries with it possessory right, coupled with the right to explore and

work the property under existing laws and regulations. Schwarz v. Ulmer, 149 Colo. 601, 370 P.2d 889 (1962).

This article is so-called "Map Law". Schwarz v. Ulmer, 149 Colo. 601, 370 P.2d 889 (1962).

Applied in Ellet v. Campbell, 18 Colo. 510, 33 P. 521 (1893).

34-43-102. Width of lode claim. The width of all lode claims located after April 13, 1923, may equal but not exceed three hundred feet on each side of the middle of the vein or crevice, and the owners of any lode claims located before April 13, 1923, and having a lesser width, who are desirous of securing the benefit of this section, may file an additional certificate claiming such additional width as provided in this section, if the additional certificate does not interfere with the existing rights of others at the time of filing of the same. No such additional certificate or other record thereof shall preclude the claimants from proving such titles as they may have held under previous location.

Source: L. 1874: p. 186, § 2. G.L. § 1812. G.S. § 2398. R.S. 08: § 4193. L. 13: p. 413, § 1. L. 21: p. 614, § 1. C.L. § 3279. L. 23: p. 458, § 1. CSA: C. 110, § 169. CRS 53: § 92-22-2. C.R.S. 1963: § 92-22-2.

ANNOTATION

Width of mining claim is distance between side lines. Davis v. Shepherd, 31 Colo. 141, 72 P. 57 (1903).

34-43-103. Lode claim certificate - contents. (1) The discoverer of a lode, within three months from the date of discovery, shall record his claim in the office of the recorder of the county in which such lode is situated, by a location certificate, which shall contain:

- (a) The name of the lode;
- (b) The name of the locator;
- (c) The date of location;
- (d) The number of feet in length claimed on each side of the center of the discovery shaft;
- (e) The general course of the lode as near as may be.

Source: L. 1874: p. 186, § 3. G.L. § 1813. G.S. § 2399. R.S. 08: § 4194. C.L. § 3280. CSA: C. 110, § 170. CRS 53: § 92-22-3. C.R.S. 1963: § 92-22-3.

ANNOTATION

- I. General Consideration.
- II. The Certificate.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Pick and Shovel Mining Laws in an Atomic Age: A Case for Reform", see 27 Rocky Mt. L. Rev. 375 (1955).

Object of this section is not merely to fix the amount of surface territory allowed the locator for working purposes, but also to protect him in the exclusive possession and enjoyment of his lode and all other veins, lodes, or ledges, the tops or apexes of which are within his surface boundaries. *Armstrong v. Lower*, 6 Colo. 393 (1882).

Precedence according to dates of discovery where section disregarded. Where a court finds that each of two contesting parties has disregarded this section, the court may allow precedence according to the dates of discovery. *Faxon v. Barnard*, 4 F. 702 (D. Colo. 1890).

Where relative priority of conflicting mining locations depends upon exact hour of the day of filing of location certificates, fractions of days are taken into account. *Washington Gold Mining & Milling Co. v. O'Laughlin*, 46 Colo. 503, 105 P. 1092 (1909).

Subsequent locator has burden of proving lode does not extend to another claim. Where another, by a subsequent and conflicting location, undertakes to hold a portion of the prior claim on the ground that the lode thereof does not extend to the conflicting premises, the burden of proving such fact is upon the subsequent locator. *Armstrong v. Lower*, 6 Colo. 393 (1882).

Courts usually fix claim by natural object. Nowhere in express language is there a requirement that the claim is to be tied to a natural object, yet the courts have generally held that this is necessary in order to give the proper notice of location. *Drummond v. Long*, 9 Colo. 538, 13 P. 543 (1886); *Nylund v. Ward*, 67 Colo. 108, 187 P. 514 (1919).

Tree as permissible monument by which to describe claim. *Quimby v. Boyd*, 8 Colo. 194, 6 P. 462 (1884), appeal dismissed, 128 U.S. 488, 9 S. Ct. 147, 32 L. Ed. 502 (1888).

Location certificates are admissible in evidence to show existence of location notice. *Coleman v. Davis*, 13 Colo. 98, 21 P. 1018 (1889).

II. THE CERTIFICATE.

Location certificate fixes boundaries of claim, and subsequent locators are affected thereby in spite of errors in the notice posted at the discovery shaft. *Courtney v. Ward*, 67 Colo. 105, 187 P. 517 (1919).

Certificate under this section, when filed, takes place of notice on ground under section 34-43-106, and after it is filed there is no necessity for posting, or keeping, at the point of a new and valid discovery, if the first alleged discovery is void, of a notice of what particular ground is claimed. *Treasury Tunnel, Mining & Reduction Co. v. Boss*, 32 Colo. 27, 74 P. 888, 105 Am. St. R. 60 (1903).

Certificate given to proper official is there-after constructive notice although never filed. If the instrument which this section requires to be recorded in a public office is lodged with the proper officer, and the person so depositing it does all that the law requires of him as conditions precedent to the right to have it recorded, or if these conditions are, and can be, waived by the officer, it is constructive notice to all those who thereafter deal with the property, even if the recorder neglects to record it. *Shepard v. Murphy*, 26 Colo. 350, 58 P. 588 (1899).

Certificate not necessarily invalid because not filed within prescribed time. Although this section requires the certificate to be filed within three months to secure the claim from the date of discovery against intervening claimants seeking to locate the same ground, no reason is perceived for saying that the certificate shall be invalid if not filed within the time fixed by law. *Faxon v. Barnard*, 4 F. 702 (D. Colo. 1880).

Location of the lode was not complete so as to remove it from the public domain. Although the claim was located in 1876, the certificate of location removing the lode from the public domain was not recorded until 1880, after the county's declarations of a public road traversing the lode and public use of the road established acceptance of a federal right-of-way grant. Therefore, the road segment on the lode is a public road. *Camp Bird Colo., Inc. v. Bd. of County Comm'rs of Ouray*, 215 P.3d 1277 (Colo. App. 2009).

Permissibility of inferring fact of discovery from certificate. *Cheesman v. Hart*, 42 F. 98 (D. Colo. 1890).

Certificate cannot be filed on land not open to location. *Schwarz v. Ulmer*, 149 Colo. 601, 370 P. 2d 889 (1962).

34-43-104. Location certificate void - when. Any location certificate of a lode claim which does not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and such description as identifies the claim with reasonable certainty shall be void.

Source: L. 1874: p. 186, § 4. G.L. § 1814. G.S. § 2400. R.S. 08: § 4195. C.L. § 3281. CSA: C. 110, § 171. CRS 53: § 92-22-4. C.R.S. 1963: § 92-22-4.

ANNOTATION

- I. General Consideration.
- II. Necessary Description.
- III. Defective Certificate.

I. GENERAL CONSIDERATION.

Construction of section not to be unduly technical. The provisions of this section are mandatory and necessary, but they are not to be given a construction so technical as will result in imposing on locators an unnecessary burden, or requirements with which, in many instances, they would be unable to comply. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Intention of this section is to impart notice to third parties. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Certificate to help locate claim. The purpose of the certificate is to give one seeking the locus of a recorded claim something in the nature of an initial point from which to start, and, following the course or distance given, find with reasonable certainty the claim located. *Drummond v. Long*, 9 Colo. 538, 13 P. 543 (1886).

Two insufficient certificates may combine to satisfy section. A miner may change the location of his claim so as to include abandoned overlapping claims, or other territory which has not been located, and for this purpose he may file an additional location certificate, and both certificates are admissible in evidence in a traverse suit to show that he has complied with the law, and though neither one as a whole may be absolutely correct and in perfect conformity to this section, yet if from both considered together there may be found all that the law requires, this section being otherwise complied with, the miner's record is complete and his title is perfect. *Duncan v. Fulton*, 15 Colo. App. 140, 61 P. 244 (1900).

Inadmissibility of parol evidence to contradict monument called for by deed. *Resurrection Gold Mining Co. v. Fortune Gold Mining Co.*, 129 F. 668 (8th Cir. 1904).

II. NECESSARY DESCRIPTION.

Federal law and this section are substantially same in requiring that recorded certificate contain proper description as shall identify the claim with reasonable certainty. *Drummond v. Long*, 9 Colo. 538, 13 P. 543 (1886); *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Object of requiring reference to natural object or permanent monument is to furnish means by which to identify claim, and whatever reference will accomplish this object satisfies the law. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Whether or not such reference sufficient deemed question of fact. Whether or not there is a reference to a natural object or permanent monument as to satisfy the provisions of the law must necessarily be a question of fact, unless, in the certificate, there is no reference to such an object or monument, or unless, although there is such a reference, it is so indefinite that it can be told from an inspection of the certificate that the claim cannot be identified thereby. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Satisfactory monuments or markers. Stone monuments, blazed trees, the confluence of streams, the point of intersection of well-known gulches, ravines or roads, prominent buttes, hills, mining shafts, etc., are enumerated as satisfying the requirements of this section, as are the permanent monuments of a neighboring mining claim. *Quimby v. Boyd*, 8 Colo. 194, 6 P. 462 (1884), appeal dismissed, 128 U.S. 488, 9 S. Ct. 147, 32 L. Ed. 502 (1888); *Gilpin County Mining Co. v. Drake*, 8 Colo. 586, 9 P. 787 (1885); *Drummond v. Long*, 9 Colo. 538, 13 P. 543 (1886).

Sufficient description. A location certificate of a mining claim which gave the government section in which it was located, and gave the course from which the highest point of a well-known mountain bore from the discovery shaft, the shaft, being 18 feet deep, and then located the surface boundaries on the ground, setting posts at the corners and center of the side lines, the surface boundaries being tied by course and distance to the discovery shaft, contained a sufficient description of the claim to conform to the requirements of this section. *Duncan v. Fulton*, 15 Colo. App. 140, 61 P. 244 (1900).

Patented claim will be presumed to be well-known natural object or permanent monument until the contrary appears. *Duncan v. Fulton*, 15 Colo. App. 140, 61 P. 244 (1900); *Carlin v. Freeman*, 19 Colo. App. 334, 75 P. 26 (1904).

And there is no difference between references to a patented claim and to one not patented; the presumption must be the same in each case. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

Reference to another claim is prima facie compliance with section. Where the description in a location certificate is by metes and bounds

beginning at corner No. 1, describing a parallelogram by courses and distances, and concluding by stating, "Corner No. 1 of Wichita lode joining corner No. 4 of Wichita Eagle lode", the reference to the Wichita Eagle lode is a prima facie compliance with this section. *Londonderry Mining Co. v. United Gold Mines Co.*, 38 Colo. 480, 88 P. 455 (1906).

III. DEFECTIVE CERTIFICATE.

Section 34-43-115 qualifies provisions of this section. Section 34-43-115, providing that a defective or erroneous certificate may be amended, must be understood as qualifying the

declaration in this section that such a certificate is void. *Frisholm v. Fitzgerald*, 25 Colo. 290, 53 P. 1109 (1898); *Nylund v. Ward*, 67 Colo. 108, 187 P. 514 (1919).

Thus, defective certificates lack force but are not wholly void. When this section is read in connection with § 34-43-115 and qualified by it, it will be understood as saying the defective certificates are lacking in force and sufficiency until amended as provided in § 34-43-115, but are not wholly void. *McElvoy v. Hyman*, 25 F. 596 (D. Colo. 1885).

Recorder's error held not to void location certificate. *Weise v. Barker*, 7 Colo. 178, 2 P. 919 (1884).

34-43-105. Certificate shall contain but one location. No location certificate shall claim more than one location, whether the location is made by one or several locators. If it purports to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be determined which location is first described, the certificate shall be void as to all.

Source: L. 1874: p. 190, § 17. G.L. § 1826. G.S. § 2412. R.S. 08: § 4196. C.L. § 3282. CSA: C. 110, § 172. CRS 53: § 92-22-5. C.R.S. 1963: § 92-22-5.

34-43-106. Manner of locating claims. (1) Before filing such location certificate, the discoverer shall locate his claim by:

(a) Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper if necessary, to show a well-defined crevice;

(b) Posting at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery;

(c) Marking the surface boundaries of the claim.

(2) The locator of any mining claim, in lieu of sinking a discovery shaft as required in paragraph (a) of subsection (1) of this section, may at his option, within the period allowed for the recording of the location certificate as provided in section 34-43-103, file in the office of the county clerk and recorder of the county in which such claim is located, a map which shall be attached to said location certificate, which map shall be of a scale of approximately one inch equals five hundred feet, prepared from an actual field survey and shall show the following:

(a) The name and address of the discoverer of the claim;

(b) The legal subdivisions of the land upon which the claim is located, if such land is surveyed;

(c) The claim pattern with courses and distances of the boundary lines, and reference to the nearest section or quarter-section corner of the public land survey, if surveyed, or reference to a permanent monument, if unsurveyed, by which the location of the claim on the ground can be readily and accurately ascertained.

(3) The owner of any mining claim located prior to April 8, 1955, may avail himself of the provisions of this subsection (3) and subsection (2) of this section by preparing and filing with the county clerk and recorder of the county in which the claim is situated an amended location certificate with a map as provided in subsection (2) of this section within one hundred eighty days from April 8, 1955.

Source: L. 1874: p. 186, § 5. G.L. § 1815. G.S. § 2401. R.S. 08: § 4197. C.L. § 3283. CSA: C. 110, § 173. CRS 53: § 92-22-6. L. 55: p. 603, § 1. C.R.S. 1963: § 92-22-6.

ANNOTATION

- I. General Consideration.
- II. Discovery Shaft.
- III. Posting Sign.
- IV. Map of Claim.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Requirements for a Discovery Excavation in Colorado", see 32 Dicta 77 (1955). For article, "The Acquisition of Uranium Mining Rights", see 32 Dicta 167 (1955). For article, "Highlights of the 1955 Colorado Legislative Session — Mining", see 28 Rocky Mt. L. Rev. 56 (1955).

Discovery of vein or lode is essential prerequisite to location; there is no valid location without it. *Buck v. Jones*, 18 Colo. App. 250, 70 P. 951 (1902).

Discovery made after staking and recording will inure to benefit of locator, but only as to the date of such discovery. *Healey v. Rupp*, 37 Colo. 25, 86 P. 1015 (1906).

Order of time in which the several acts of location are performed is not of essence under this section: It is immaterial that a discovery is made subsequent to the completion of the acts of location; provided that, all necessary acts are taken before intervening rights of third parties accrue. *Brewster v. Shoemaker*, 28 Colo. 176, 63 P. 309 (1900); *Treasury Tunnel, Mining & Reduction Co. v. Boss*, 32 Colo. 27, 74 P. 888 (1903).

Claim not lost by forcible eviction. Where a claimant was forcibly prevented from reentering the boundaries of his claim and his posted notice was removed and where he was unable to prepare a certificate for record, the claimant did not lose his right to perfect the location against the claims of third parties. *Erhardt v. Boaro*, 113 U.S. 527, 5 S. Ct. 560, 28 L. Ed. 1113 (1885).

Presumption of validity of mining claim location certificate. *Schuman v. Venard*, 110 Colo. 487, 136 P.2d 289 (1943).

Discovery of uranium by instruments not a mineral discovery. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936, 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

Applied in *McMillen v. Ferrum Mining Co.*, 32 Colo. 38, 74 P. 461, 105 Am. St. R. 64 (1903).

II. DISCOVERY SHAFT.

Crevice, as employed in this section, clearly means a mineral-bearing vein. *Terrible Mining Co. v. Argentine Mining Co.*, 89 F. 583 (D. Colo. 1883); *McCaig v. Bryan*, 10 Colo. 309, 15 P. 413 (1887); *Van Zandt v. Argentine Mining Co.*, 8 F. 725 (D. Colo. 1881), aff'd, 122 U.S. 478, 7 S. Ct. 1356, 30 L. Ed. 1140 (1887); *Beals v. Cone*, 27 Colo. 473, 62 P. 948 (1900), appeal

dismissed, 188 U.S. 184, 23 S. Ct. 275, 47 L. Ed. 435 (1903).

Discovery shaft must expose vein upon which location is based, or at least disclose one; therefore, the mere discovery of some other vein within the limits of the claim cannot supply the absence of the one required to be exposed in the discovery shaft. *Beals v. Cone*, 27 Colo. 473, 62 P. 948 (1900), appeal dismissed, 188 U.S. 184, 23 S. Ct. 275, 47 L. Ed. 435 (1903).

Otherwise location not valid. Where a locator relocated an abandoned mining claim, sinking his discovery shaft and posting notices several hundred feet from the discovery shaft of the abandoned location and filed his certificate designating his discovery as in the discovery shaft sunk by him, and he failed to make a discovery of mineral in the shaft sunk by him, the mere fact that he knew of the existence of a vein on the claim that had been discovered in the discovery shaft of the abandoned claim would not make his location valid. *McMillen v. Ferrum Mining Co.*, 32 Colo. 38, 74 P. 461 (1903), appeal dismissed, 197 U.S. 343, 25 S. Ct. 533, 49 L. Ed. 784 (1905).

Sinking second discovery shaft off patented claim is valid location, although no new notice is posted. A mining claim was located and all the steps necessary to perfect such location were regular except that the discovery shaft was sunk and notice was posted upon a prior patented claim. Before the intervention of any other rights, the locator learned that his discovery shaft was on patented ground and sank another shaft and discovered mineral on the same vein within 100 feet of the old shaft but clear of the patented claim, and did the necessary discovery and assessment work but did not post any notice at the new discovery shaft nor file any additional certificate of location nor change the boundaries of the original location. It is held that the location was good and valid as against a conflicting claim located subsequent to the second and valid discovery of mineral. *Treasury Tunnel, Mining & Reduction Co. v. Boss*, 32 Colo. 27, 74 P. 888, 105 Am. St. R. 60 (1903).

III. POSTING SIGN.

Purpose of posting signs. One object of the requirement that the discoverer shall, before filing his location certificate, post at the point of discovery a notice is that those wishing to make subsequent locations may thereby be advised of the ground already appropriated, and this serves to hold his ground until his location is perfected within the statutory time. *Treasury Tunnel, Mining & Reduction Co. v. Boss*, 32 Colo. 27, 74 P. 888 (1903); *Emerson v. Akin*, 26 Colo. App. 40, 140 P. 481 (1914).

Notices need not be maintained or replaced. It is a well-known fact that the boundaries as marked upon the ground, and the notices thereupon posted, within a very short time often disappear, and there is no requirement in the law that they shall be maintained or replaced by the locator in order to keep his location good. *Treasury Tunnel, Mining & Reduction Co. v. Boss*, 32 Colo. 27, 74 P. 888 (1903).

Notice held sufficient. A notice written upon a piece of paper, folded so that no part of the writing appeared, laid upon a stone and held in place by another stone, is sufficient, though no other notice so far as appears was ever posted. *Emerson v. Akin*, 26 Colo. App. 40, 140 P. 481 (1914).

Notice need not be posted at point of second discovery where location certificate is amended. Where a locator of a mining claim made a second and valid discovery of mineral and amended his location certificate so as to base his location on said second discovery, it was not necessary to post notice at the point of second discovery. *McMillen v. Ferrum Mining Co.*, 32 Colo. 38, 74 P. 461 (1903), appeal dismissed, 197 U.S. 343, 25 S. Ct., 533, 49 L. Ed. 784 (1905).

IV. MAP OF CLAIM.

Purpose of requiring filing of map with location certificate within specific period is to

34-43-107. Marking boundaries. Such surface boundaries shall be marked by six substantial posts hewed or marked on the sides which are in toward the claim, and sunk in the ground, one at each corner and one at the center of each side line. Where it is practically impossible on account of bedrock to sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts fall by right upon precipitous ground where the proper placing of it is impractical or dangerous to life or limb, it shall be legal and valid to place any such post at the nearest practicable point, suitably marked, to designate the proper place.

Source: L. 1874: p. 187, § 6. **L. 1876:** p. 94, § 1. **G.L.** § 1816. **G.S.** § 2402. **R.S. 08:** § 4198. **C.L.** § 3284. **CSA:** C. 110, § 174. **CRS 53:** § 92-22-7. **C.R.S. 1963:** § 92-22-7.

ANNOTATION

Law reviews. For article, "Examining Titles of Unpatented Lode Mining Claims", see 27 *Rocky Mt. L. Rev.* 397 (1955).

Purpose of marking boundaries. Marking the boundaries of surface claim operates to determine the right of the claimant as between himself and the general government and to notify third persons of his rights and it prevents fraud by swinging or floating. *Pollard v. Shively*, 5 Colo. 309 (1880).

The provisions of this section are so far imperative as to require that the boundaries may be readily traced by the posts. The notice which this section contemplates and seeks by

ensure notice of claims and to establish priorities: however, strict compliance with location certificate requirements is not required to locate a claim. *Dodge v. Amrine*, 42 Colo. App. 288, 596 P.2d 71 (1979).

Substantial compliance with this section is sufficient to locate claim. *Dodge v. Amrine*, 42 Colo. App. 288, 596 P.2d 71 (1979).

Contents of location certificate. The location certificate need only contain sufficient information to enable a reasonably intelligent person to locate the claim on the ground by referring to the location certificate and the marked boundaries. *Dodge v. Amrine*, 42 Colo. App. 288, 596 P.2d 71 (1979).

Designation of permanent monument satisfactory where no public reference point located. Where there is no evidence that any public reference points can be located, designation of a permanent monument is an appropriate method of satisfying the description requirements. *Dodge v. Amrine*, 42 Colo. App. 288, 596 P.2d 71 (1979).

Filing of one map locating several contiguous claims permitted. Where a locator seeks to locate several contiguous claims, the requirements of this section are met by filing one map showing all the claims, along with each group of location certificates, so long as a reasonably intelligent person can locate the claim by reference to the location certificate and the map. *Dodge v. Amrine*, 42 Colo. App. 288, 596 P.2d 71 (1979).

and through them, may not be substantially impaired by any omission. *Pollard v. Shively*, 5 Colo. 309 (1880).

Where monuments are relied upon to control courses and distances, they must be found as called for. *Pollard v. Shively*, 5 Colo. 309 (1880).

Requirements that side posts be placed in center of side lines is satisfied if they are substantially at the center: A discrepancy of 150 feet cannot be said to be substantially in the center. *Pollard v. Shively*, 5 Colo. 309 (1880).

Cutting initial into solid rock at corner of mining claim is not equivalent to sinking of

post in the ground, or, where that cannot be done by reason of bed rock, planting one in a pile of stones. Croesus Mining, Milling & Smelting Co. v. Colo. Land & Mineral Co., 19 F. 78 (D. Colo. 1884); Taylor v. Parenteau, 23 Colo. 368, 48 P. 505 (1897).

But stump, hewed and marked, may be adopted as location post if the descriptive survey gives both its real and assigned character. Pollard v. Shively, 5 Colo. 309 (1880).

Provisions for placing post at "nearest practical point" cannot be invoked where setting stake at true corner is merely inconvenient. Croesus Mining, Milling & Reduction Co. v. Colo. Land & Mineral Co., 19 F. 78 (D.

Colo. 1884); Taylor v. Parenteau, 23 Colo. 368, 48 P. 505 (1897); Beals v. Cone, 27 Colo. 473, 62 P. 948 (1900), appeal dismissed, 188 U.S. 184, 23 S. Ct. 275, 47 L. Ed. 435 (1903).

Hence, fact that proper place falls upon railroad embankment 12 or 15 feet in height will not excuse failure to place post at proper place unless it would have been in such close proximity to the rails as to be interfered with by passage of trains. Beals v. Cone, 27 Colo. 473, 62 P. 948 appeal dismissed, 188 U.S. 184, 23 S. Ct. 275, 47 L. Ed. 435 (1903).

Applied in Couch v. Clifton, 626 P.2d 731 (Colo. App. 1981).

34-43-108. To hold lode - crosscut - tunnel - adit. Any open cut, crosscut, or tunnel which cuts a lode at the depth of ten feet below the surface shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

Source: L. 1874: p. 187, § 7. **G.L.** § 1817. **G.S.** § 2403. **R.S. 08:** § 4199. **C.L.** § 3285. **CSA:** C. 110, § 175. **CRS 53:** § 92-22-8. **C.R.S. 1963:** § 92-22-8.

ANNOTATION

Law reviews. For article, "The Requirement for a Discovery Excavation in Colorado", see 32 Dicta 77 (1955).

Open cut, crosscut, tunnel, and adit are each made equivalent of discovery shaft. Gray v. Truby, 6 Colo. 278, (1882); Electro-Magnetic Mining & Dev. Co. v. Van Auken, 9 Colo. 204, 11 P. 80 (1886); Brewster v. Shoemaker, 28 Colo. 176, 63 P. 309 (1900).

Thus, location of valid mining claim may be leased on underground discovery of mineral where the vein has never been opened on the surface. Brewster v. Shoemaker, 28 Colo. 176, 63 P. 309 (1900).

Adit may be either open or under cover. This section, providing that an adit of at least 10 feet, in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft, contemplates

that as to the 10 feet required it might be either open or under cover, or open in part and under cover in part, dependent upon the nature of the ground. Electro-Magnetic Mining & Dev. Co. v. Van Auken, 9 Colo. 204, 11 P. 80 (1886).

And there is no requirement as to depth of adit although it is expressly provided that an open cut, a crosscut, and a tunnel shall cut the lode at a depth of 10 feet below the surface. Gray v. Truby, 6 Colo. 278 (1882).

But development must always be such in its dimensions and character as to make it equivalent of discovery shaft and bring it substantially within the meaning of the term "adit". Gray v. Truby, 6 Colo. 278 (1882).

Notwithstanding provisions of this section, location certificate must correctly describe open cut, shafts, or adit, to which it refers. Duncan v. Eagle Rock Gold Mining & Reduction Co., 48 Colo. 569, 111 P. 588 (1910).

34-43-109. Sixty days to sink discovery shaft. The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.

Source: L. 1874: p. 187, § 8. **G.L.** § 1818. **G.S.** § 2404. **R.S. 08:** § 4200. **C.L.** § 3286. **CSA:** C. 110, § 176. **CRS 53:** § 92-22-9. **C.R.S. 1963:** § 92-22-9.

ANNOTATION

Work shall be performed within 60 days from the time of making the discovery. Ingemarson v. Coffey, 41 Colo. 407, 92 P. 908 (1907).

Sixty days runs from date of discovery of mineral and erecting of discovery notice. Ingemarson v. Coffey, 41 Colo. 407, 92 P. 908 (1907).

Extension of time. A locator cannot extend the time within which to do this work by changing the date on his discovery stake, or renewing his notice of discovery. *Ingemarson v. Coffey*, 41 Colo. 407, 92 P. 908 (1907).

As to notice of discovery protecting claim during 60-day period, see *Omar v. Roper*, 11 Colo. 380, 18 P. 443 (1888).

34-43-110. What location includes - extralateral rights. The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

Source: L. 1874: p. 187, § 9. G.L. § 1819. G.S. § 2405. R.S. 08: § 4201. C.L. § 3287. CSA: C. 110, § 177. CRS 53: § 92-22-10. C.R.S. 1963: § 92-22-10.

ANNOTATION

Extralateral right exists without restriction in mere holder of certificate location under this section. *Cheesman v. Hart*, 42 F. 98 (D. Colo. 1890).

As to dispute between extralateral rights of senior and junior locators, see *Jefferson Min-*

ing Co. v. Anchoria LeLand Mining & Milling Co., 32 Colo. 176, 75 P. 1070 (1904); *Rico-Argentine Mining Co. v. Rico Consol. Mining Co.*, 74 Colo. 444, 223 P. 31 (1923).

34-43-111. Top not to be followed beyond lines. If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.

Source: L. 1874: p. 187, § 10. G.L. § 1820. G.S. § 2406. R.S. 08: § 4202. C.L. § 3288. CSA: C. 110, § 178. CRS 53: § 92-22-11. C.R.S. 1963: § 92-22-11.

34-43-112. Placer claim certificate - recording - manner of locating. (1) The discoverer of a placer claim, within thirty days from the date of discovery, shall record his claim in the office of the recorder of the county in which said claim is situated by a location certificate, which shall contain:

- (a) The name of the claim, designating it as a placer claim;
- (b) The name of the locator;
- (c) The date of location;
- (d) The number of acres or feet claimed; and
- (e) A description of the claim by such reference to natural objects or permanent monuments as shall identify the claim.

(2) Before filing such location certificate the discoverer shall locate his claim:

- (a) By posting upon such claim a plain sign or notice containing the name of the claim, the name of the locator, the date of discovery, and the number of acres or feet claimed;
- (b) By marking the surface boundaries with substantial posts, sunk into the ground, one at each angle of the claim.

Source: L. 1879: p. 140, § 1. G.S. § 2385. R.S. 08: § 4205. C.L. § 3289. CSA: C. 110, § 179. CRS 53: § 92-22-12. C.R.S. 1963: § 92-22-12.

ANNOTATION

Intention of this section is to impart notice to third parties. And whether or not there is a reference to such a natural object or permanent monument as to satisfy the provisions of the law must necessarily be a question of fact. If by any reasonable construction the language employed in a description will impart notice to subsequent locators, it is sufficient. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

Location of placer claims is governed first by federal law in 30 U.S.C. §§ 28 and 35; second by this statute, if not in conflict with the federal law; and third by court decisions interpreting the statutes. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

Section applies to all placer claims, whether located on surveyed or unsurveyed government lands. *Saxton v. Perry*, 47 Colo. 263, 107 P. 281 (1910).

Colorado law does not permit location without marking the boundaries of the claim on the ground. *Roberts v. Morton*, 549 F.2d 158 (10th Cir. 1976), cert. denied, 434 U.S. 834, 98 S. Ct. 121, 54 L. Ed.2d 95 (1977).

Locator of placer in public domain must mark boundaries by stake at each angle, although the location be made upon surveyed lands, and according to the subdivisions of a public survey. *Saxton v. Perry*, 47 Colo. 263, 107 P. 281 (1910).

Conformity of the boundaries of placer claim with lines of government survey, by description of a placer location as covering recognized units or subdivisions of such survey, is sufficient to satisfy the requirements of this section. *Clark v. Pueblo Quarries*, 103 Colo. 402, 86 P.2d 602 (1939).

Placer mining location certificate may contain description of land by section numbers not based upon governmental survey, the only requirement being that a description be used that

will lead a reasonable man to the claim location. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

Constructive possession. In an attempted location of a mining claim in the public domain, if one of the essential requirements of this section is not observed, e.g., the marking of the boundaries, constructive possession is not conferred upon the locator: Neither do improvements made under such invalid location. *Saxton v. Perry*, 47 Colo. 263, 107 P. 281 (1910).

Certificate is not required to show precise boundaries of claim as marked on ground, but it is sufficient if it contains directions which, taken in connection with such boundaries, will enable a person of reasonable intelligence to find the claim and trace the lines. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

Liberal construction should be given to location certificate, and the same should not be declared insufficient unless it clearly fails to identify a claim. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

It is question of fact whether location certificate adequately describes intended claim. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

There is nothing in this section which requires that claim stakes or posts be made of wood. *McNulty v. Kelly*, 141 Colo. 23, 346 P.2d 585 (1959).

Substantial or colorable compliance with state location requirements has been enforced even in controversies between the government and private claimants. *Roberts v. Morton*, 549 F.2d 158 (10th Cir. 1976), cert. denied, 434 U.S. 834, 98 S. Ct. 121, 54 L. Ed.2d 95 (1977).

State law location requirements applied in contest proceedings initiated by United States. *Roberts v. Morton*, 549 F.2d 158 (10th Cir. 1976), cert. denied, 434 U.S. 834, 98 S. Ct. 121, 54 L. Ed.2d 95 (1977).

34-43-113. Tunnel claim - recording. If any person locates a tunnel claim for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof with the names of the parties interested therein.

Source: R.S. p. 465, § 4. G.L. § 1800. G.S. § 2389. R.S. 08: § 4207. C.L. § 3290. CSA: C. 110, § 180. CRS 53: § 92-22-13. C.R.S. 1963: § 92-22-13.

34-43-114. Affidavit of annual labor, improvements, or payment of federal claim rental fee - effect of filing. (1) On or before December 30th of each year following the end of any set time or annual period allowed for the performance of labor or making improvements upon any lode claim or placer claim, or for the payment of an annual claim rental fee as required by federal law in lieu of such work or improvements, the person on whose behalf such outlay was made, or such person's representative, may make and record in the office of the recorder of the county wherein such claim is situate an affidavit in substance as follows:

Source: L. 1874: p. 188, § 13. G.L. § 1823. G.S. § 2409. R.S. 08: § 4210. C.L. § 3292. CSA: C. 110, § 182. CRS 53: § 92-22-15. C.R.S. 1963: § 92-22-15.

ANNOTATION

- I. General Consideration.
- II. Relocation of Claim.

I. GENERAL CONSIDERATION.

This section embraces all classes of mining claims, and, therefore, those known as placers. Kirk v. Meldrum, 28 Colo. 453, 65 P. 633 (1901).

Section provides for correction of errors and defects occurring in original certificate. The plain purport and effect of the first clause of this section is to enable the miner, who in good faith has gone upon the public domain and expended time and money in performing the substantial acts required to locate a mining claim, but through inadvertence or ignorance has failed to comply with the requirements of § 34-43-103 in describing his claim, to cure such error at any time by an amendment correcting the defective description, and, thus, perfect his record, as of the date of his original certificate. Nylund v. Ward, 67 Colo. 108, 187 P. 514 (1919).

This section qualifies declaration in § 34-43-104 that defective certificate is void. Frisholm v. Fitzgerald, 25 Colo. 290, 53 P. 1109 (1898); Nylund v. Ward, 67 Colo. 108, 187 P. 514 (1919).

Although void location cannot be cured and made valid by filling additional or amended location certificate. Sullivan v. Sharp, 33 Colo. 346, 80 P. 1054 (1905); Sackville v. Mann, 110 Colo. 523, 135 P.2d 1014 (1943).

Additional location certificate must be based upon original and relate back to first location. Strepey v. Stark, 7 Colo. 614, 5 P. 111 (1884); Hallack v. Traver, 23 Colo. 14, 46 P. 110 (1896); Sackville v. Mann, 110 Colo. 523, 135 P.2d 1014 (1943).

Filing of new location certificate, and sinking of new shaft, is not of itself abandonment of original location. King Solomon Tunnel & Dev. Co. v. Mary Verna Mining Co., 22 Colo. App. 528, 127 P. 129 (1912).

In filing amended location certificates defendant is not required to discover new vein or lode, sink any additional shaft, or make any new discoveries of mineral thereon. Becker v. Pugh, 17 Colo. 243, 29 P. 173 (1892); King Solomon Tunnel & Dev. Co. v. Mary Verna Mining Co., 22 Colo. App. 528, 127 P. 129 (1912).

Purpose for which certificate is filed need not be stated. This section provides that additional location certificates may be filed for certain purposes; it does not require that such purposes should be expressed in the certificate. Johnson v. Young, 18 Colo. 625, 34 P. 173 (1893).

II. RELOCATION OF CLAIM.

This section authorizes change of boundaries and taking in of territory not included within original location. Nylund v. Ward, 67 Colo. 108, 187 P. 514 (1919).

Junior locator may amend to include abandoned claim. Upon failure to perform the annual development work, the territory becomes abandoned in the sense that it is subject to location after such failure and before resumption of work thereon, in the same manner as other unappropriated domain, and is subject to be taken by the owners of a junior location by the filing of an additional certificate under this section. Johnson v. Young, 18 Colo. 625, 34 P. 173 (1893); Oscamp v. Crystal River Mining Co., 58 F. 293 (8th Cir. 1893).

Limited applicability. The proviso is only applicable to a change of boundaries and relocation that should take in territory not before included within the claim: This would protect the rights of the locator without prejudicing any of the interests that third parties may have rightly acquired. McEvoy v. Hyman, 25 F. 596 (D. Colo. 1885); Nylund v. Ward, 67 Colo. 108, 187 P. 514 (1919).

Amended certificates may not include other territory and injure other intervening rights. Washington Gold Mining & Milling Co. v. O'Laughlin, 46 Colo. 503, 105 P. 1092 (1909).

34-43-116. Relocation of abandoned claims. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocater may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected.

Source: L. 1874: p. 189, § 16. G.L. § 1825. G.S. § 2411. R.S. 08: § 4211. L. 11: p. 515, § 2. C.L. § 3293. CSA: C. 110, § 183. CRS 53: § 92-22-16. C.R.S. 1963: § 92-22-16.

ANNOTATION

Relocation of abandoned mining claim is made in substantially same manner as original location thereof. *Armstrong v. Lower*, 6 Colo. 393 (1882).

Recording claim on territory overlapping abandoned claim not relocation of that claim. The surveying, staking, and recording of a location certificate of territory previously located, which overlapped the territory of the abandoned claim, does not constitute a relocation of that claim. *Omar v. Soper*, 11 Colo. 380, 18 P. 443 (1888).

No relocation possible where alleged owners in possession of claim. Where defendants were in actual possession of a mining claim, and engaged in developing it, claiming to be the owners, plaintiffs cannot initiate a title thereto by a survey and the recording of a location

certificate. *Omar v. Soper*, 11 Colo. 380, 18 P. 443 (1888).

Abandonment of property question of intention. A transaction affecting property may be irregular; but if the owner does not intend to abandon it, and continues in possession, claiming in good faith to be the owner, no abandonment can take place. *Omar v. Soper*, 11 Colo. 380, 18 P. 443 (1888).

Original owner cannot perfect relocation after his own delinquency. To say that the original locator has the power within himself to make effectual a forfeiture arising from his own delinquency by perfecting a relocation is to place in his hands the extraordinary privilege of holding mineral lands perpetually without doing any of the work whatever. *Ingemarson v. Coffey*, 41 Colo. 407, 92 P. 908 (1907).

ARTICLE 44

Tenants in Common of Mines

34-44-101.	Legislative declaration.		profits.
34-44-102.	Definitions.	34-44-107.	Actions of accounting - set-offs.
34-44-103.	Mine owners - tenants in common - rights.	34-44-108.	Notice to tenants - contents - effect.
34-44-104.	Accounting - items considered.	34-44-109.	Setoff rules applicable - when.
34-44-105.	Contribution from tenants - liens.	34-44-110.	Leases - rights and duties of lessee.
34-44-106.	Statement - disposition of		

34-44-101. Legislative declaration. This article shall be construed as a remedial law, intended to promote mining activity, and shall be liberally construed in favor of the working tenant.

Source: L. 23: p. 455, § 9. CSA: C. 92, § 16. CRS 53: § 92-23-9. C.R.S. 1963: § 92-23-9.

ANNOTATION

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L. J. 1 (1974).

34-44-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Mine" includes all real property acquired, used, or chiefly valuable for mining purposes.
- (2) "Mining operation" includes all acts constituting the prospecting, development, and working of a mine, including the milling and sale of ore, minerals, and mine products, which are carried out with reasonable diligence from the beginning of work until completion of the operation, or until abandonment, or termination by law.
- (3) "Person" includes a corporation, partnership, firm, association of persons, personal representative, heir, assignee, trustee, or receiver.
- (4) "Tenant" includes tenant in common, joint tenant, or coparcener.

Source: L. 23: p. 455, § 9. CSA: C. 92, § 16. CRS 53: § 92-23-9. C.R.S. 1963: § 92-23-9.

34-44-103. Mine owners - tenants in common - rights. If two or more persons own any mine they shall be considered tenants in common. Any one or more such tenants in common shall have the right to enter upon, occupy, prospect, develop, and work said mine in a minerlike manner, extracting, milling, and disposing of the ore from the common property without the consent of any nonworking tenant in common, subject to accounting to the nonworking tenant in common for his proportionate share of the net profits of such mining operations.

Source: L. 23: p. 451, § 1. CSA: C. 92, § 8. CRS 53: § 92-23-1. C.R.S. 1963: § 92-23-1.

ANNOTATION

Joint mining adventure must have its origin in contract, although no particular form of expression or formality of execution is necessary, and a parol agreement is sufficient. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936, 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

Mining partnership exists by operation of law where the several owners of mine cooperate in working thereof, and one of the partners may not bind the others to third parties to the extent a general partner may do. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936, 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

It is not necessary that grubstake contract state interest of each of parties, the presumption being equal ownership. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936, 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

34-44-104. Accounting - items considered. In said accounting, the working tenant shall be permitted to set off against the proceeds of such mining operation all expenditures and expenses of said work, including: The building and repairing of such roads, whether public or private, as are necessary or expedient to furnish economical transportation to mill or reduction works or railroad; prospecting, development work, and mining, including openings and appliances for ventilation and drainage, and dead work generally; the purchase, installation, maintenance, and operation of tools, machinery, equipment, and appliances for prospecting, developing, and working the mine, and of transporting ore and products, and all other expenses reasonably incident to or arising out of such mining operation. In said accounting, the working tenant shall be allowed setoff for the reasonable value of his service actually rendered in or upon the operation, but the amount of compensation shall not exceed the current rate of wages or compensation for work of like character in the community in which said mine is situate, and shall also be allowed setoff for his expenditures and expenses in prospecting unless it clearly and convincingly appears that said prospecting was done in bad faith with willful intent to injure or defraud the nonworking tenant.

Source: L. 23: p. 451, § 2. CSA: C. 92, § 9. CRS 53: § 92-23-2. C.R.S. 1963: § 92-23-2.

Mineral discovery not necessary. Where a contract between parties is to share in claims actually staked in an area found by use of an instrument by one of the parties, a "mineral" discovery is not required before the contract can become effective. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

Termination of prospecting partnership. In the absence of an agreement or circumstances indicating the contrary, a prospecting partnership terminates with the expedition undertaken pursuant thereto. *Smaller v. Leach*, 136 Colo. 297, 316 P.2d 1030 (1957), cert. denied, 356 U.S. 936, 78 S. Ct. 777, 2 L. Ed.2d 812 (1958).

Denial of profits when cotenant mines without giving notice. *Latta v. Stout*, 119 Colo. 257, 203 P.2d 496 (1949).

ANNOTATION

Cotenant has no right to accounting where he gave no notice. Where a purchaser at a sheriff's sale of a six-tenths interest in a mining claim failed to give notice required by § 34-44-108, even if he were otherwise entitled to avail himself of the privilege of rendering an account-

ing in accordance with this section, he must be denied the privilege for having failed to comply with the mandatory requirements of § 34-44-108. *Latta v. Stout*, 119 Colo. 257, 203 P.2d 496 (1949).

34-44-105. Contribution from tenants - liens. No working tenant shall have any right to demand contribution from any nonworking tenant, except out of the proceeds or net profits of such mining operation; and no lien shall be created or attach to the interest of the nonworking tenant, but only to the interest of the working tenant.

Source: L. 23: p. 452, § 3. CSA: C. 92, § 10. CRS 53: § 92-23-3. C.R.S. 1963: § 92-23-3.

34-44-106. Statement - disposition of profits. The working tenant shall render to the nonworking tenant, at least once in every six months after commencing said operation and also within thirty days after completing said operation, a written statement giving a true, full, and fair account of all of the expenditures and expenses of said work and mining operation, and of the proceeds of all ore or minerals extracted and sold, and the net profits or losses of the operation from the beginning of said operation to the date of such statement. If said operation has been conducted at a net profit the working tenant shall at once pay to the nonworking tenant his proportionate share of said net profits, and if he fails to do so, his right to continue such mining operation under the provisions of this article shall at once cease. In case the address of any nonworking tenant is unknown, or he has failed to notify the working tenant of a place at which, or an agent to whom, payment may be made, or if he cannot be conveniently found so that payment may be made to him of his proportionate share of said net profits, or in case any nonworking tenant is dead and there is no known executor or administrator of his estate in the state of Colorado qualified to receive such statement and payment, the working tenant may deposit said statement and payment with the state treasurer who shall receive said deposit under the same obligations and with like effect as other deposits made under the provisions of section 15-12-914, C.R.S.

Source: L. 23: p. 452, § 4. CSA: C. 92, § 11. CRS 53: § 92-23-4. C.R.S. 1963: § 92-23-4. L. 73: p. 1648, § 11.

34-44-107. Actions of accounting - setoffs. On and after April 13, 1923, in all actions for an accounting between tenants in common of any mine, the working tenant shall be allowed to establish his expenditures and expenses, by way of setoff against the proceeds and profits of the operation, without being required to show either that the improvements were necessary or that they enhanced the value of the property.

Source: L. 23: p. 453, § 5. CSA: C. 92, § 12. CRS 53: § 92-23-5. C.R.S. 1963: § 92-23-5.

34-44-108. Notice to tenants - contents - effect. (1) Any tenant in common of any mine who commences to work the same without the consent of the other tenants in common and who desires to avail himself of the benefits of this article shall give a written notice to the other tenants in common interested in said mine stating his intention to work said mine. The notice shall describe the property by name, patent survey number, or book and page of the recorded location certificate, or other certain description, and shall give the name and post-office address of the working tenant, or the name and post-office address of the lessee where the proposed work is to be done under lease, the general plan, the date of commencing said mining operation, and the probable duration thereof, and shall invite the other tenants in common of said mine to join in said operation.

(2) Such notice shall be served, within ten days after its date, upon all other tenants in common by delivering a copy personally, or by depositing the same in the mail, postage prepaid, addressed to such person at his last known address. If any tenant in common cannot be served in this manner within ten days after the date of said notice, the notice shall be recorded within twenty days after its date in the office of the recorder of the county in which said mine is situated, and such record, from and after its recording, shall be constructive notice to all persons not otherwise notified.

(3) Any tenant in common in said mine shall have the right, within twenty days after the receipt of said notice by him personally, or within thirty days after the record of said notice in case he has not otherwise received notice or obtained knowledge of said mining operation, to join in said mining operation to the extent of his proportionate interest in said mine, upon giving to the working tenant written notice of his intention so to do, and upon paying to the working tenant his proportionate part of the expenditures and expenses of said mining operation from the date of commencing work to the date of so joining in said mining operation.

(4) In the event that any working tenant does not give the notice provided in this section, and serve or record the notice as provided in this section, he shall be denied any rights, benefits, or remedies created or conferred by this article, and shall have only such rights and remedies and be under such duties and liabilities as existed by law prior to April 13, 1923.

Source: L. 23: p. 454, § 6. CSA: C. 92, § 13. CRS 53: § 92-23-6. C.R.S. 1963: § 92-23-6.

34-44-109. Setoff rules applicable - when. The provisions of this article, as to the principles and rules of decision relating to setoff in accounting, shall apply to all actions for accounting between tenants in common of mines in which a final judgment or decree of accounting has not been made and entered of record.

Source: L. 23: p. 455, § 7. CSA: C. 92, § 14. CRS 53: § 92-23-7. C.R.S. 1963: § 92-23-7.

34-44-110. Leases - rights and duties of lessee. Any tenant in common, joint tenant, or coparcener in any mine shall have the right to lease his interest therein, and his lessee shall in such case be entitled to all the rights, benefits, and remedies, and shall be subject to all the duties and obligations of a working tenant as provided in this article.

Source: L. 23: p. 455, § 8. CSA: C. 92, § 15. CRS 53: § 92-23-8. C.R.S. 1963: § 92-23-8.

ARTICLE 45

Offenses

34-45-101.	Damages for taking ore.	34-45-105.	Removal of cabins. (Repealed)
34-45-102.	Conspiracy - threats - evidence - penalty. (Repealed)	34-45-106.	Who is deemed owner. (Repealed)
34-45-103.	Killing in entry by force.	34-45-107.	Penalty for wrongful removal. (Repealed)
34-45-104.	Removal of trees a misdemeanor. (Repealed)		

34-45-101. Damages for taking ore. In trials for the recovery of the value of ore or minerals wrongfully mined and extracted, if plaintiff shows himself entitled to recover, and if he had the rightful possession of the ground from which the ore was taken at the time the action was brought or tried, the fact that defendant may have been in possession, either actual or constructive, when the case was tried shall not deprive plaintiff from recovering damages for the value of the ore or mineral mined and extracted according to the rules of

law pertaining to the trials of actions of that character. But for the purpose of the action, plaintiff shall be deemed and held to be in possession of all the ground, drifts, stopes, openings, and premises from which the ore was taken, although he may not be able to reach such ground from his own openings and workings. The rule of law that plaintiff can recover nominal damages for the first entry, and then wait until he obtains actual possession of the ground from which the ore was taken, and then bring another action for the value of the ore or mineral so mined and taken, shall not be observed nor applied to defeat, in the first action, the recovery of the value of the ore or mineral so wrongfully mined and taken.

Source: L. 1893: p. 349, § 1. R.S. 08: § 4219. C.L. § 3307. CSA: C. 110, § 200. CRS 53: § 92-26-1. C.R.S. 1963: § 92-26-1.

34-45-102. Conspiracy - threats - evidence - penalty. (Repealed)

Source: L. 1874: p. 192, § 3. G.L. § 1828. G.S. § 2414. R.S. 08: § 4220. C.L. § 3308. CSA: C. 110, § 201. CRS 53: § 92-26-2. C.R.S. 1963: § 92-26-2. L. 2003: Entire section repealed, p. 915, § 24, effective August 6.

34-45-103. Killing in entry by force. If any persons associate and agree to enter by force of numbers, and such number is calculated to inspire terror, or by force and violence, or by threats of violence, against any persons in the actual possession of any lode, gulch, or placer claim, and upon or into such lode, gulch, or placer claim, and upon such entry, any persons are killed, said persons, and each of them, so entering, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry, who shall either be present, aiding and assisting, or shall by promise of money, property, influence, assistance, or other thing of value, in any way encourage such entry, shall be deemed a principal in the commission of said offense.

Source: L. 1874: p. 192, § 4. L. 1876: p. 94, § 1. G.L. § 1829. G.S. § 2415. R.S. 08: § 4221. C.L. § 3309. CSA: C. 110, § 202. CRS 53: § 92-26-3. L. 63: p. 339, § 53. C.R.S. 1963: § 92-26-3.

Cross references: For murder in the first degree, see § 18-3-102.

34-45-104. Removal of trees a misdemeanor. (Repealed)

Source: L. 1889: p. 460, § 1. R.S. 08: § 4222. C.L. § 3310. CSA: C. 110, § 203. CRS 53: § 92-26-4. C.R.S. 1963: § 92-26-4. L. 77: Entire section repealed, p. 293, § 9, effective May 26.

34-45-105. Removal of cabins. (Repealed)

Source: L. 1889: p. 460, § 2. R.S. 08: § 4223. C.L. § 3311. CSA: C. 110, § 204. CRS 53: § 92-26-5. C.R.S. 1963: § 92-26-5. L. 77: Entire section repealed, p. 293, § 9, effective May 26.

34-45-106. Who is deemed owner. (Repealed)

Source: L. 1889: p. 460, § 3. R.S. 08: § 4224. C.L. § 3312. CSA: C. 110, § 205. CRS 53: § 92-26-6. C.R.S. 1963: § 92-26-6. L. 77: Entire section repealed, p. 293, § 9, effective May 26.

34-45-107. Penalty for wrongful removal. (Repealed)

Source: L. 1889: p. 461, § 4. R.S. 08: § 4225. C.L. § 3313. CSA: C. 110, § 206. CRS 53: § 92-26-7. C.R.S. 1963: § 92-26-7. L. 77: Entire section repealed, p. 293, § 9, effective May 26.

ARTICLE 46**Mining Equipment - Ownership**

34-46-101.	Definitions.	34-46-104.	When transportation prohibited except by railroad.
34-46-102.	Written evidence of ownership required.	34-46-105.	Penalty.
34-46-103.	Prohibiting destruction, appropriation, or deprivation of use.	34-46-106.	Possession prima facie unlawful - when.

34-46-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Mining equipment" includes all parts of a mine plant or any equipment used in connection with any such plant, whether the same is underground or on the surface, which contributes or may contribute to the mining, treatment, or handling of ores, or any metalliferous or nonmetalliferous mineral products, and, without restriction, such generalization includes any new or used tools, track, cars, pipe, cable, timber, belting, houses, tents, or treatment plants or parts thereof, of the value when new of not less than twenty-five dollars.

Source: L. 41: p. 540, § 1. CSA: C. 110, § 332. CRS 53: § 92-36-1. C.R.S. 1963: § 92-35-1.

34-46-102. Written evidence of ownership required. It is unlawful for any person to have in his possession any mining equipment acquired after April 16, 1941, without the written evidence of ownership or right of possession.

Source: L. 41: p. 540, § 2. CSA: C. 110, § 333. CRS 53: § 92-36-2. C.R.S. 1963: § 92-35-2.

34-46-103. Prohibiting destruction, appropriation, or deprivation of use. It is unlawful for any person to destroy or appropriate to his own use any mining equipment of which he is not the lawful owner and possessor or to deprive the lawful owner and possessor of the use or possession thereof.

Source: L. 41: p. 540, § 3. CSA: C. 110, § 334. CRS 53: § 92-36-3. C.R.S. 1963: § 92-35-3.

34-46-104. When transportation prohibited except by railroad. It is unlawful to transport any used mining equipment except by railroad transportation without first obtaining written evidence of ownership or right of possession thereof by the person transporting the same, or satisfying the local sheriff or other peace officers of the county in which machinery is located that the person desiring to move such used machinery or equipment as defined in section 34-46-101 is responsible and has a legal right to move such used machinery or equipment. Such evidence shall, upon demand of any peace officer or Colorado state patrolman, be exhibited, and unless so exhibited, any such officer shall take possession of such mining equipment at the expense, if any, of the shipper and shall hold the same until the provisions of this article have been complied with.

Source: L. 41: p. 541, § 4. CSA: C. 110, § 335. CRS 53: § 92-36-4. C.R.S. 1963: § 92-35-4.

34-46-105. Penalty. Any person who violates any provision of this article commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 41: p. 541, § 5. CSA: C. 110, § 336. CRS 53: § 92-36-5. C.R.S. 1963: § 92-35-5. L. 77: Entire section amended, p. 882, § 59, effective July 1, 1979. L. 89: Entire section amended, p. 848, § 124, effective July 1. L. 2002: Entire section amended, p. 1546, § 302, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

34-46-106. Possession prima facie unlawful - when. Upon the trial of any person charged with the theft or unlawful possession of mining equipment, or with the violation of any provision of this article, the possession by such person of such mining equipment without written evidence of ownership or right of possession shall be prima facie evidence that such possession is unlawful.

Source: L. 41: p. 541, § 6. CSA: C. 110, § 337. CRS 53: § 92-36-6. C.R.S. 1963: § 92-35-6.

ARTICLE 47

Safety Regulations

34-47-101 to 34-47-131. (Repealed)

Source: L. 88: Entire article repealed, p. 1199, § 10, effective May 3.

Editor's note: This article was numbered as article 33 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to health and safety in mines, see articles 20 to 25 and 31 of this title.

ARTICLE 48

Easements

34-48-101.	Right-of-way for water.		surface.
34-48-102.	Mine under buildings.	34-48-107.	Tunnels - drifts - right-of-way
34-48-103.	Flooding - tailings - liability.		- condemnation.
34-48-104.	Right-of-way for hauling	34-48-108.	Accounting.
	quartz.	34-48-109.	Surveys.
34-48-105.	Rights-of-way - condemna-	34-48-110.	Rights-of-way for conveyance
	tion.		and storage of water.
34-48-106.	Security for mining under	34-48-111.	Right of eminent domain.

34-48-101. Right-of-way for water. Whenever any persons are engaged in bringing water into any portion of a mine, they have the right-of-way secured to them, and may pass over any claim, road ditch, or other structure, if the water is guarded so as not to interfere with prior rights.

Source: R.S. p. 465, § 2. G.L. § 1798. G.S. § 2387. R.S. 08: § 4212. C.L. § 3294. CSA: C. 110, § 184. CRS 53: § 92-24-1. C.R.S. 1963: § 92-24-1.

ANNOTATION

Law reviews. For article, "Mining and Marketing the Uranium", see 27 Rocky Mt. L. Rev. 482 (1955). For article, "Colorado Oil and Gas

Conveyancing in Context", see 56 U. Colo. L. Rev. 495 (1985).

34-48-102. Mine under buildings. No person has the right to mine under any building or other improvement unless he shall first secure the parties owning the same against all damages, except by priority of right.

Source: R.S. p. 465, § 3. G.L. § 1799. G.S. § 2388. R.S. 08: § 4213. C.L. § 3295. CSA: C. 110, § 185. CRS 53: § 92-24-2. C.R.S. 1963: § 92-24-2.

ANNOTATION

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L. J. 1 (1974).

34-48-103. Flooding - tailings - liability. In no case shall any person be allowed to flood the property of another person with water, or wash down the tailings of his sluice upon the claim or property of other persons, but it is the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

Source: R.S. p. 466, § 8. G.L. § 1804. G.S. § 2393. R.S. 08: § 4214. C.L. § 3296. CSA: C. 110, § 186. CRS 53: § 92-24-3. C.R.S. 1963: § 92-24-3.

ANNOTATION

This section would appear to create liability without fault arising from pollution of stream with mine tailings, whereby damage is suffered by another. *Freel v. Ozark-Mahoning Co.*, 208 F. Supp. 93 (D. Colo. 1962).

Under this section a miner must take care of his tailings on his own property, and evidence of a custom of miners to dump their tailings upon their own grounds, and let them take care of themselves, is insufficient to prevent the issuing of an injunction against the washing down of tailings on plaintiff's claim, where the consent of plaintiff to the acts complained of is not shown. *Fuller v. Swan River Placer Mining Co.*, 12 Colo. 12, 19 P. 836 (1888).

Joint liability for pollution. Where two or more defendants contribute to the pollution of

waters of a natural stream, each is responsible for the entire resulting damage even though its separate act might not have caused injury. *Wilmore v. Chain O'Mines, Inc.*, 96 Colo. 319, 44 P.2d 1024 (1934).

Operators of ore reduction mills have no right to pollute waters of natural stream by dumping mill tailings therein to the injury of others using water below their point of operation. *Humphreys Tunnel & Mining Co. v. Frank*, 46 Colo. 524, 105 P. 1093 (1909); *Wilmore v. Chain O'Mines, Inc.*, 96 Colo. 319, 44 P.2d 1024 (1934); *Slide Mines, Inc. v. Left Hand Ditch Co.*, 102 Colo. 69, 77 P.2d 125 (1938).

Applied in *Fuller v. Swan River Placer Mining Co.*, 12 Colo. 12, 19 P. 836 (1888).

34-48-104. Right-of-way for hauling quartz. Every miner has the right-of-way across any and all claims for the purpose of hauling quartz from his claim.

Source: R.S. p. 466, § 9. G.L. § 1805. G.S. § 2394. R.S. 08: § 4215. C.L. § 3297. CSA: C. 110, § 187. CRS 53: § 92-24-4. C.R.S. 1963: § 92-24-4.

34-48-105. Rights-of-way - condemnation. All mining claims, including patented and unpatented claims, shall be subject to the right-of-way of any ditch, flume, pipeline for transporting water or air for mining purposes, or of any tram, tramway, or pack trail, across any such locations or claims. Any person or corporation desiring to construct, maintain, and

operate any such flume, ditch, pipeline, tram, tramway, or pack trail shall pay due and just compensation for such right-of-way to the owner of the claim through which it is proposed to construct, operate, and maintain such flume, ditch, pipeline, tram, tramway, or pack trail. When the parties cannot agree upon such right-of-way and the amount of compensation to be paid the owner of such claim, the same shall be determined in the manner provided by law for the exercise of right of eminent domain. Such ditch, flume, or pipeline shall be so constructed that the water from such ditch, flume, or pipeline shall not injure vested rights by flooding.

Source: L. 1874: p. 188, § 11. G.L. § 1821. G.S. § 2407. R.S. 08: § 4216. L. 17: p. 378, § 1. C.L. § 3298. CSA: C. 110, § 188. CRS 53: § 92-24-5. C.R.S. 1963: § 92-24-5.

ANNOTATION

Section does not give miners power to condemn private property to build private rail-

road. People ex rel. Aspen M. & S. Co. v. District Court, 11 Colo. 147, 17 P. 298 (1887).

34-48-106. Security for mining under surface. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it is refused, he may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

Source: L. 1874: p. 188, § 12. G.L. § 1822. G.S. § 2408. R.S. 08: § 4217. C.L. § 3299. CSA: C. 110, § 189. CRS 53: § 92-24-6. C.R.S. 1963: § 92-24-6.

ANNOTATION

Law reviews. For article, "The Interest of Landowner and Lessee in Oil and Gas in Colorado", see 25 Rocky Mt. L. Rev. 117 (1953).

Party removing minerals responsible for damages caused by negligence. Failure of a surface owner to exact security as a condition precedent to removing the minerals from his property does not release the parties removing such minerals from the payment of damages occasioned by their negligence. Campbell v. Louisville Coal Mining Co., 39 Colo. 379 (1907).

This section gives surface owner rights in addition to previous equitable rights. Barker v. Mintz, 73 Colo. 262, 215 P. 534 (1923).

Surface owner is not obliged in the first instance to invoke this section. Although this section furnishes to the surface owner a right in addition to his previous equitable rights, he is not obliged in the first instance to invoke it; but when the owner of the mineral right is willing to, and does, furnish a prescribed bond to save the surface owner harmless, ample relief is afforded to the latter. Whiles v. Grand Junction Mining & Fuel Co., 86 Colo. 418, 282 P. 260 (1929).

Court by its general equity powers, as well as in proceedings under this section, has power, if necessary, to provide for security for the payment from time to time to the surface

owner of all damages which may accrue to him. Barker v. Mintz, 73 Colo. 262, 215 P. 534 (1923); Whiles v. Grand Junction Mining & Fuel Co., 86 Colo. 418, 282 P. 260 (1929).

Reservation of minerals in deed does not imply right to injure surface unless such right is made clear and expressed in terms so plain as to admit of no doubt. Evans Fuel Co. v. Leyda, 77 Colo. 356, 236 P. 1023 (1925); Victor-American Fuel Co. v. Wiggins, 746 P.2d 58 (Colo. App. 1987).

Right to work mines as to injure surface by removing its subjacent support cannot be claimed by custom, a custom to that effect being unreasonable, repugnant to, and inconsistent with existing law. Evans Fuel Co. v. Leyda, 77 Colo. 356, 236 P. 1023 (1925).

Right to surface support, in absence of express or implied waiver, is absolute right, and the owner of the surface estate has the right to demand this support even if, to that end, it becomes necessary to leave every foot of coal untouched under the estate, unless the subjacent owner gives security for damages under this section. Evans Fuel Co. v. Leyda, 77 Colo. 356, 236 P. 1023 (1925); Kirchof v. Sheets, 118 Colo. 244, 194 P.2d 320 (1948).

Court must consider value of surface land when making condemnation award. In an action to adjudicate interest in a condemnation

award, where the trial court gave recognition to the ownership of the surface of the land in the determination of the value of gravel deposits under the surface, by taking this value into account in determination of the value of the mineral rights, the trial court reached a result consistent with that intended by this section. *United States v. 1,253.14 Acres of Land*, 455 F.2d 1177 (10th Cir. 1972).

Language of the deed providing that holder of mineral rights pay holder of surface rights fifteen dollars per acre of the surface so "used" cannot be said to reserve clearly and with certainty the right to destroy the surface by strip mining. *Victor-American Fuel Co. v. Wiggins*, 746 P.2d 58 (Colo. App. 1987).

34-48-107. Tunnels - drifts - right-of-way - condemnation. The owner of any mining claim or property who, by reason of established rights, shall be entitled to follow any mineral-bearing vein or lode into the property of another, and the owner of any mining claim or property lying on two or more sides of the property of another has the right to enter and cross such adjoining or intermediate claims or property, with such drifts, tunnels, and crosscuts as may be necessary for the practical or economical mining and development of his own property and for the purpose of extracting and removing ore therefrom. When any such owner and the owners of such adjoining or intermediate claims or property through which such owner desires to pass under the terms of this section and sections 34-48-108 and 34-48-109 shall be unable to agree upon the terms, conditions, and purchase price of rights-of-way for such necessary drifts, tunnels, and crosscuts, then the owner seeking to exercise the rights granted in this section may exercise the right of eminent domain and condemn the rights-of-way into, across, and through such intermediate or adjacent lands such as may be necessary for the practical and economical working of his own property, and such rights-of-way are declared to be private ways of necessity.

Source: L. 27: p. 483, § 1. CSA: C. 110, § 190. L. 43: p. 432, § 1. CRS 53: § 92-24-7. C.R.S. 1963: § 92-24-7.

34-48-108. Accounting. Any owner exercising the rights and privileges granted in this article shall do so in such manner as not to interfere with the mining operations of the owner into or through whose property he seeks to go, and shall extract only such ore as is necessary in the reasonable exercise of the rights granted in this article, and all ore extracted shall be accounted for by the person exercising such rights to the owner of the property from which such ore is taken, at its gross value on the surface.

Source: L. 27: p. 484, § 2. CSA: C. 110, § 191. CRS 53: § 92-24-8. C.R.S. 1963: § 92-24-8.

34-48-109. Surveys. The owners of land through which it is proposed to construct such tunnel shall have the right at any reasonable time, upon application to the superintendent or other managing officer of such condemning owner, to enter his works with their surveyors and inspectors for the purpose of inspection and making a survey of any such works and shall have the right of ingress and egress through said works at all reasonable times.

Source: L. 27: p. 484, § 3. CSA: C. 110, § 192. CRS 53: § 92-24-9. C.R.S. 1963: § 92-24-9.

34-48-110. Rights-of-way for conveyance and storage of water. All persons and corporations engaged in mining or milling of ores have the right-of-way over, upon, under, and across all mining claims, including patented and unpatented claims, or other lands, for the construction, maintenance, and operation of flumes, ditches, pipelines, and conduits to convey water for use in said mines and mills, and to convey tailings and waste from said mines, mills, and reduction plants, and may also take and condemn any such claims or other lands for the construction, maintenance, and operation of reservoirs to be used for the settling or storing of tailings or waste from any such mines, mills, and reduction plants, without the consent of the owners of such property affected.

Source: L. 37: p. 850, § 1. **CSA:** C. 110, § 192(1). **CRS 53:** § 92-24-10. **C.R.S. 1963:** § 92-24-10.

34-48-111. Right of eminent domain. All persons or corporations shall pay due and just compensation for rights-of-way to the owners of the property through which it is proposed to construct any flume, ditch, pipeline, or conduit or upon which any reservoirs shall be located. When the parties cannot agree upon such right-of-way or reservoir site or the amount of compensation to be paid therefor, all such persons or corporations are vested with the power of eminent domain and are authorized to proceed to acquire such rights-of-way for flumes, ditches, pipelines, conduits, and reservoir sites, in the manner provided by law for the exercise of the right of eminent domain.

Source: L. 37: p. 851, § 2. **CSA:** C. 110, § 192(2). **CRS 53:** § 92-24-11. **C.R.S. 1963:** § 92-24-11.

Cross references: For right of eminent domain, see articles 1 to 7 of title 38.

ARTICLE 49

Surveys

34-49-101.	Survey - notice - affidavit.	34-49-105.	Not dedication of ways - fees.
34-49-102.	Platting fractional claims.	34-49-106.	County to provide books.
34-49-103.	Plat - monuments.	34-49-107.	Designation by name and
34-49-104.	Plat certified and recorded.		number.

34-49-101. Survey - notice - affidavit. (1) In all actions pending in any district court of this state, wherein the title or right to possession of any mining claims shall be in dispute, the court may, upon application of any of the parties to such action, enter an order for an underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such action, or in any way interested in the result of the same, and, upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it is to attend upon such survey and observe the method of making the same, said second surveyor to be at the cost of the party asking therefor.

(2) It is also lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall thereupon be allowed to enter into such property and examine the same. The court may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property, when such removal is shown to be necessary to a just determination of the question involved. No such order shall be made for survey and inspection except in open court or in chambers, upon notice of application for such order for at least six days, and not then except by agreement of the parties, or upon the affidavit of two or more persons, that such survey and inspection are necessary to the just determination of the action, which affidavits shall state the facts in such case, and wherein the necessity for survey exists, nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

Source: L. 1874: p. 190, § 1. **G.L.** § 1827. **G.S.** § 2413. **R.S. 08:** § 4218. **C.L.** § 3300. **CSA:** C. 110, § 193. **CRS 53:** § 92-25-1. **C.R.S. 1963:** § 92-25-1.

34-49-102. Platting fractional claims. The owners of adjoining, abutting, or adjacent fractions of patented mining properties may plat the same for taxation and description.

Source: L. 17: p. 376, § 1. **C.L.** § 3301. **CSA:** C. 110, § 194. **CRS 53:** § 92-25-2. **C.R.S. 1963:** § 92-25-2.

34-49-103. Plat - monuments. Such owners shall cause the same to be surveyed and a plat thereof to be made by the county surveyor or some other competent surveyor, which plat shall particularly describe each fraction as blocks and lots, describing by appropriate lines each fraction or parcel of land so platted. Reference shall also be made upon the plat to some known and permanent monument from which surveys may be made. If no such monument exists within convenient distance, the surveyor shall, at the time of making his survey, plant and fix at least three feet below the surface, at a corner most convenient for reference, a good and sufficient stone, the total expense of which shall not exceed the sum of fifteen dollars, and the surveyor shall designate upon the plat the point where the same may be found.

Source: L. 17: p. 376, § 2. C.L. § 3302. CSA: C. 110, § 195. CRS 53: § 92-25-3. C.R.S. 1963: § 92-25-3.

34-49-104. Plat certified and recorded. The plat, having been completed, shall be certified by the surveyor and acknowledged by him before a notary public or other officer authorized to take acknowledgments of deeds. The certificate of the surveyor and of acknowledgments, together with the plat, shall be recorded in the office of the county clerk and recorder in and for the county in which the land is situated, in the same manner as a deed of real estate is recorded. The acknowledgment and recording shall have like legal effect, and certified copies thereof and of such plat may be used in evidence to the same extent and with like effect, as in case of deeds.

Source: L. 17: p. 377, § 3. C.L. § 3303. CSA: C. 110, § 196. CRS 53: § 92-25-4. C.R.S. 1963: § 92-25-4.

34-49-105. Not dedication of ways - fees. The acknowledgment and recording of such plat shall not be held in law or in equity to be a conveyance in fee simple of any ways, driveways, or passageways noted on such plat, and no such plat or acknowledgment shall be admitted to record or have any effect in law or in equity until the fees of the surveyor and the charges in sections 34-49-103 and 34-49-106 shall be paid.

Source: L. 17: p. 377, § 4. C.L. § 3304. CSA: C. 110, § 197. CRS 53: § 92-25-5. C.R.S. 1963: § 92-25-5.

34-49-106. County to provide books. It is the duty of the county clerk and recorder of each county where such adjoining, abutting, or adjacent fractions of patented mining properties are situated, to provide an appropriate book for the making and preservation of the plats, surveys, certificates, and acknowledgments contemplated, and he shall be permitted to charge and collect from the owners of each such subdivision recording fees the same as for any one plat or subdivision.

Source: L. 17: p. 377, § 5. C.L. § 3305. CSA: C. 110, § 198. CRS 53: § 92-25-6. C.R.S. 1963: § 92-25-6. L. 83: Entire section amended, p. 1227, § 10, effective April 12.

34-49-107. Designation by name and number. It is the duty of the county clerk and recorder to designate by name or number such plat and each separate fraction of land included therein, and such fractions shall thereafter be known and described for taxation and all other purposes as so designated.

Source: L. 17: p. 377, § 6. C.L. § 3306. CSA: C. 110, § 199. CRS 53: § 92-25-7. C.R.S. 1963: § 92-25-7.

ARTICLE 50**Drainage**

34-50-101.	Common influx of water.	34-50-107.	Liability for flow of water hoisted.
34-50-102.	Costs prorated.		
34-50-103.	Incorporating to drain mines.	34-50-108.	Applicable to opened mines only.
34-50-104.	Liability for noncooperation.		
34-50-105.	Action to recover - inspection.	34-50-109.	Evidence to be considered by court.
34-50-106.	Right to use of water hoisted.		

34-50-101. Common influx of water. Whenever contiguous or adjacent mines upon the same or upon separate lodes have a common ingress of water, or from subterraneous communication of the water have a common drainage, it is the duty of the owners, lessees, or occupants of each mine so related to provide for their proportionate share of the drainage thereof.

Source: L. 1870: p. 82, § 1. G.L. § 1830. G.S. § 2416. R.S. 08: § 4226. C.L. § 3314. CSA: C. 110, § 207. CRS 53: § 92-27-1. C.R.S. 1963: § 92-27-1.

34-50-102. Costs prorated. Any parties so related, failing to comply with section 34-50-101 for the drainage of the mines owned or occupied by them, thereby imposing an unjust burden upon neighboring mines, whether owned or occupied by them, shall pay respectively to those performing the work of drainage, their proportion of the actual and necessary costs and expenses of doing such drainage to be recovered by an action in any court of competent jurisdiction.

Source: L. 1870: p. 82, § 2. G.L. § 1831. G.S. § 2417. R.S. 08: § 4227. C.L. § 3315. CSA: C. 110, § 208. CRS 53: § 92-27-2. C.R.S. 1963: § 92-27-2.

34-50-103. Incorporating to drain mines. It is lawful for mining companies and all individuals engaged in mining, having a common interest in draining such mines, to unite for the purpose of effecting the same under a common name and upon such terms and conditions as may be agreed upon. Every such association, having filed a certificate of incorporation as provided by law, shall be deemed a corporation, with all the rights, incidents, and liabilities of a body corporate, insofar as the same may be applicable.

Source: L. 1870: p. 82, § 3. G.L. § 1832. G.S. § 2418. R.S. 08: § 4228. C.L. § 3316. CSA: C. 110, § 209. CRS 53: § 92-27-3. C.R.S. 1963: § 92-27-3.

34-50-104. Liability for noncooperation. Failing to mutually agree as indicated in section 34-50-103 for drainage, jointly, one or more of the said parties may undertake the work of drainage, after giving reasonable notice; and should the remaining parties then fail, neglect, or refuse to unite in equitable arrangements for doing the work or sharing the expense thereof, they shall be subject to an action therefor as specified in section 34-50-102.

Source: L. 1870: p. 82, § 4. G.L. § 1833. G.S. § 2419. R.S. 08: § 4229. C.L. § 3317. CSA: C. 110, § 210. CRS 53: § 92-27-4. C.R.S. 1963: § 92-27-4.

34-50-105. Action to recover - inspection. (1) When an action is commenced to recover the cost and expenses for draining a lode or mine, it is lawful for the plaintiff to apply to the court for an order to inspect and examine the lodes or mines claimed to have been drained by the plaintiff; or someone for him shall make affidavit that such inspection or examination is necessary for a proper preparation of the case for trial. The court shall grant an order for the underground inspection and examination of the lode or mines

described in the petition. Such order shall designate the number of persons, not exceeding three, besides the plaintiff or his representative, to examine and inspect such lode and mines and take the measurement thereof, relating the amount of water drained from the lode or mine, or the number of fathoms of ground mined and worked out of the lode or mine claimed to have been drained, and the cost of such examination and inspection to be borne by the party applying therefor.

(2) The court has power to cause the removal of any rock, debris, or other obstacles in any lode or vein, when such removal is shown to be necessary to a just determination of the question involved. No such order for inspection and examination shall be made except in open court or at chambers, upon notice of application for such order of at least three days, and not then except by agreement of the parties, and not unless it appears that the plaintiff has been refused the privilege of making the inspection and examination by the defendant, his or their agent.

Source: G.L. § 1834. G.S. § 2420. R.S. 08: § 4230. C.L. § 3318. CSA: C. 110, § 211. CRS 53: § 92-27-5. C.R.S. 1963: § 92-27-5.

34-50-106. Right to use of water hoisted. When any person or corporation engages in mining or milling, and in the prosecution of such business hoists or raises water from mines or natural channels, and the water flows away from the premises of such persons or corporations to any natural channel or gulch, the same shall be considered beyond the control of the party so hoisting or raising the same, and may be taken and used by other parties the same as that of natural water courses.

Source: G.L. § 1835. G.S. § 2421. R.S. 08: § 4231. C.L. § 3319. CSA: C. 110, § 212. CRS 53: § 92-27-6. C.R.S. 1963: § 92-27-6.

ANNOTATION

Law reviews. For article, "Water for Mining and Milling Operations — Part I", see 13 Colo. Law. 240 (1984).

One who conducts water from mines into natural stream with intent to appropriate it

for irrigation purposes, and who actually makes the first appropriation thereof, is entitled to such water under this section. *Ripley v. Park Center Land & Water Co.*, 40 Colo. 129, 90 P. 75 (1907).

34-50-107. Liability for flow of water hoisted. After any such water has been so raised and flows into any such natural channel, gulch, or draw, the party so hoisting or raising the same shall only be liable for injury caused thereby, in the same manner as riparian owners along natural water courses.

Source: G.L. § 1836. G.S. § 2422. R.S. 08: § 4232. C.L. § 3320. CSA: C. 110, § 213. CRS 53: § 92-27-7. C.R.S. 1963: § 92-27-7.

34-50-108. Applicable to opened mines only. The provisions of this article shall not be construed to apply to incipient or undeveloped mines, but to those only which shall have been opened, and shall clearly derive a benefit from being drained.

Source: G.L. § 1837. G.S. § 2423. R.S. 08: § 4233. C.L. § 3321. CSA: C. 110, § 214. CRS 53: § 92-27-8. C.R.S. 1963: § 92-27-8.

34-50-109. Evidence to be considered by court. In the trial of cases arising under this article, the court shall admit evidence of the normal stand or position of the water while at rest in an idle mine; also the observed prevalence of a common water level or a standing water line in the same or separate lodes; also the effect, if any, the elevating or depressing the water by natural or mechanical means in any given lode has upon elevating or depressing the water in the same contiguous or separate lodes or mines; also the effect

which draining or ceasing to drain any given lode or mine had upon the water in the same or contiguous or separate lodes or mines, and all other evidence which tends to prove the common ingress or subterraneous communication of water into the same lode or mine, or contiguous or separate lodes or mines.

Source: G.L. § 1838. G.S. § 2424. R.S. 08: § 4234. C.L. § 3322. CSA: C. 110, § 215. CRS 53: § 92-27-9. C.R.S. 1963: § 92-27-9.

ARTICLE 51

Mine Drainage Districts

34-51-101.	Petition for drainage district - definition.	34-51-112.	Organization - records - office.
34-51-102.	Contents of petition.	34-51-113.	Selection of system.
34-51-103.	Publication of notice - contents.	34-51-114.	Notice of selection of system.
34-51-104.	Mail copy of notice.	34-51-115.	Letting contracts.
34-51-105.	Proceedings after petition is filed.	34-51-116.	Inspection.
34-51-106.	Change of boundaries.	34-51-117.	Board may levy tax.
34-51-107.	Decree and plat.	34-51-118.	Collection of taxes.
34-51-108.	Bond for costs.	34-51-119.	Bonds - sales - interest and lien.
34-51-109.	Corporation name.	34-51-120.	Warrants.
34-51-110.	Contracts - corporate power.	34-51-121.	Salaries and per diem.
34-51-111.	Election of supervisors.	34-51-122.	Collection of tolls.
		34-51-123.	Eminent domain.
		34-51-124.	Prior drainage statutes.

34-51-101. Petition for drainage district - definition. A majority of persons owning and operating mining claims in any mining camp or district whose aggregate valuation for the purpose of taxation within said district shall not be less than one-half the valuation for assessment of all mining claims and premises situated within the boundaries of the proposed drainage district may at any time file with the clerk of the district court of the county in which such claims or the larger part thereof are situated a verified petition addressed to the judge of said district court, praying for the organization of a mine drainage district. "Persons", as used in this article, includes partnerships, joint-stock associations, companies, and corporations.

Source: L. 11: p. 508, § 1. C.L. § 3323. CSA: C. 110, § 216. CRS 53: § 92-28-1. C.R.S. 1963: § 92-28-1.

ANNOTATION

Law reviews. For article, "Mining and Marketing the Uranium", see 27 Rocky Mt. L. Rev. 482 (1955). For article, "Legal Classification of

Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

34-51-102. Contents of petition. (1) The petition shall set forth the name of the proposed mine drainage district; the acreage of the mining premises situate therein severally owned by the petitioners; approximately the aggregate area of all mining claims within the district; that said mining premises are capable of being drained and unwatered by one common system of drainage; and that such drainage will be of common benefit to all mining premises within the proposed boundaries of the district.

(2) Such petition shall further designate the proposed boundaries and give the names of all mining claims known to be located or patented within the district and the names of owners thereof and their post-office addresses so far as known to the petitioners.

Source: L. 11: pp. 508, 509, §§ 2, 3. C.L. §§ 3324, 3325. CSA: C. 110, §§ 217, 218. CRS 53: §§ 92-28-2, 92-28-3. C.R.S. 1963: §§ 92-28-2, 92-28-3.

34-51-103. Publication of notice - contents. (1) Upon the filing of said petition, the court shall designate a newspaper published within the county where the district is situated and shall order that in such newspaper there shall be published a notice addressed individually to the owners of all the mining claims within the boundaries of the proposed district, other than the petitioners, and generally to all such other persons as may be interested in said mining claims.

(2) Such notice shall be published for four successive weeks. It shall contain a copy of the petition and shall state that the petition will be heard on such date thereafter as may be set by the court and stated in such notice and shall notify all persons, owners of mining claims within said district, or persons interested therein, to appear and plead to said petition on or before a date certain, and that otherwise default will be taken and a decree made according to the facts and equities of the case as they may be found by the court.

Source: L. 11: p. 509, §§ 4, 5. C.L. §§ 3326, 3327. CSA: C. 110, §§ 219, 220. CRS 53: §§ 92-28-4, 92-28-5. C.R.S. 1963: §§ 92-28-4, 92-28-5.

34-51-104. Mail copy of notice. The court shall further order that a copy of said notice be mailed by the clerk of the court to each person, other than the petitioners, named as an owner in said petition, at least four weeks before the next term of the said court. The fact of the publication and of the mailing of the copies shall be proved in the same manner as is by law required for the proof of publication of process in civil cases.

Source: L. 11: p. 509, § 6. C.L. § 3328. CSA: C. 110, § 221. CRS 53: § 92-28-6. C.R.S. 1963: § 92-28-6.

Cross references: For proof of publication, see § 24-70-105 and C.R.C.P. 4(h).

34-51-105. Proceedings after petition is filed. All owners of mining claims or parties interested therein, including encumbrancers, shall have the right to appear and plead to such petition, and if any material allegations of the same are traversed, the issue shall be tried to the court as in equity cases, and if default is made and no traverse or other objection to the petition filed, the court shall nevertheless require proof of all the material allegations of the petition.

Source: L. 11: p. 509, § 7. C.L. § 3329. CSA: C. 110, § 222. CRS 53: § 92-28-7. C.R.S. 1963: § 92-28-7.

34-51-106. Change of boundaries. The boundaries of the proposed district shall not necessarily be the same as those stated in the petition, and the court may diminish but shall not enlarge the same.

Source: L. 11: p. 510, § 8. C.L. § 3330. CSA: C. 110, § 223. CRS 53: § 92-28-8. C.R.S. 1963: § 92-28-8.

34-51-107. Decree and plat. Upon final hearing, if the finding is in favor of the petitioners, the court shall make a decree that the proposed mine drainage district be established, stating its boundaries and describing it as "Mine Drainage District No. of the county of" giving it the proper number, which decree shall contain a plat of the said boundaries. A certified copy of such decree, including the plat, shall be filed with the county clerk and recorder of the county in which the district is situated, and a second copy shall be filed with the division of local government in the department of local affairs.

Source: L. 11: p. 510, § 9. C.L. § 3331. CSA: C. 110, § 224. CRS 53: § 92-28-9. C.R.S. 1963: § 92-28-9. L. 76: Entire section amended, p. 604, § 24, effective July 1.

34-51-108. Bond for costs. Upon the filing of said petition, the petitioners shall file a bond with sufficient sureties to be approved by the clerk of the court, conditioned for the payment of all costs which may accrue up to and including the filing of said copies of the decree. The court has power to apportion the costs between the petitioners and the parties opposing the petition in case of contest.

Source: L. 11: p. 510, § 12. C.L. § 3334. CSA: C. 110, § 227. CRS 53: § 92-28-12. C.R.S. 1963: § 92-28-12.

34-51-109. Corporation name. Upon the signing of the decree and the filing of said copies, as provided in section 34-51-107, said district shall become a municipal corporation and have and exercise all the powers necessary and requisite to carry into effect the objects for which it is formed, including the power to sue and be sued, under the name and style of "Mining Drainage District No. of the county of", the number of the district and the name of the county both being part of its corporate name.

Source: L. 11: p. 510, § 10. C.L. § 3332. CSA: C. 110, § 225. CRS 53: § 92-28-10. C.R.S. 1963: § 92-28-10.

34-51-110. Contracts - corporate power. All contracts and conveyances of a mine drainage district shall be in its corporate name, but corporate powers shall be exercised by the board of supervisors provided for in section 34-51-111.

Source: L. 11: p. 510, § 11. C.L. § 3333. CSA: C. 110, § 226. CRS 53: § 92-28-11. C.R.S. 1963: § 92-28-11.

34-51-111. Election of supervisors. (1) The court in the decree establishing a mine drainage district shall order an election to be held under the supervision of the board of county commissioners of the county wherein said district, or the greater portion thereof, is situated, for the purpose of electing five individuals to constitute the board of supervisors for said district, and shall set the time and place of said election, and direct the clerk of said board of county commissioners to cause notice of said election, and the time and place thereof, to be published for four successive weeks prior to the date of said election, in some newspaper published within the county. The individuals so elected shall hold office for one, two, three, four, and five years, in accordance with the number of votes received by them respectively. The individual receiving the highest number of votes is to serve for five years, the one receiving the next highest, four years, the next highest, three years, the next highest, two years, and the next highest, one year.

(2) Each year following the organization of the mine drainage district, elections shall be called by and held under the supervision of the board of county commissioners for the purpose of electing a successor to the member of the board of supervisors of the mine drainage district whose term expires, and to fill any other vacancies that may exist in said board, and at such election a new member shall be elected to said board of supervisors to hold office for five years. Notice of such subsequent elections is to be given in the same manner as provided in this section to be given in the case of the first election. At all elections for members of the board of supervisors of a mine drainage district, each person owning mining claims in the district shall be entitled to one vote for each claim or fractional claim within said district, owned by such person, and only individuals who are residents of the county wherein the mine drainage district lies, and who are owners of mining claims within said district, or officers, managers, or superintendents of corporations owning mining claims within said district shall be qualified for election as members of said board.

Source: L. 11: p. 510, § 13. C.L. § 3335. CSA: C. 110, § 228. CRS 53: § 92-28-13. C.R.S. 1963: § 92-28-13.

34-51-112. Organization - records - office. The board of county commissioners shall provide office room for said board of supervisors and a place for the deposit of their records. Said board shall organize by electing a chairman from their own number and by electing a clerk not of their own number, and the board shall require such clerk to keep regular minutes of their meetings and accounts of all receipts and expenditures. All records and accounts shall be open to public inspection, the same as the public records of the office of the county clerk and recorder. Meetings shall be at the call of the chairman or any two members of the board, and not less than three members shall constitute a quorum. All special and regular meetings of the board of supervisors shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

Source: L. 11: p. 511, § 14. C.L. § 3336. CSA: C. 110, § 229. CRS 53: § 92-28-14. C.R.S. 1963: § 92-28-14. L. 90: Entire section amended, p. 1500, § 11, effective July 1.

34-51-113. Selection of system. Said board shall determine upon a system of mine drainage for the district, either by gravity, power, or by both combined, and to assess the cost thereof upon the property to be benefited thereby.

Source: L. 11: p. 512, § 15. C.L. § 3337. CSA: C. 110, § 230. CRS 53: § 92-28-15. C.R.S. 1963: § 92-28-15.

34-51-114. Notice of selection of system. Upon the adoption of any system of drainage, the clerk of the board shall cause to be published once a week for four successive weeks in some weekly newspaper published in the county a notice stating in general terms the system adopted and the estimated cost, and shall mail a copy of such notice to each person shown on the mine drainage district records to be a party in interest.

Source: L. 11: p. 512, § 16. C.L. § 3338. CSA: C. 110, § 231. CRS 53: § 92-28-16. C.R.S. 1963: § 92-28-16.

34-51-115. Letting contracts. The board has power to employ labor and professional services as required and to do all things necessary to carry out the details of the plan and to contract for the work to be done by a single contract or to divide it into sections and let contracts from time to time.

Source: L. 11: p. 512, § 17. C.L. § 3339. CSA: C. 110, § 232. CRS 53: § 92-28-17. C.R.S. 1963: § 92-28-17.

34-51-116. Inspection. All parties in interest shall have access to the main avenues and laterals of such drainage system, subject to such rules and regulations as are adopted by the board of supervisors.

Source: L. 11: p. 512, § 18. C.L. § 3340. CSA: C. 110, § 233. CRS 53: § 92-28-18. C.R.S. 1963: § 92-28-18.

34-51-117. Board may levy tax. (1) In order to provide for the payment of the expenses of a drainage system and for the payment of any issue of bonds, the board of supervisors has power to levy and cause to be collected a tax upon all mining claims within

the district. Such tax shall be voted only at a regular meeting of the board and shall not exceed in any one year fifty mills on every dollar of valuation as shown by the assessment roll of the county assessor.

(2) The board of supervisors in lieu of said tax levy upon the valuation for assessment, or in the event such levy will not produce sufficient revenue to meet the payments from time to time accruing upon said bonds and interest thereon and the expenses of the mine drainage district, may order a levy against the net sale price of all ores produced in the mine drainage district, using either in combination, with such division or combination of the tax to be raised as to the board of supervisors seems meet and proper.

(3) Said tax levy, whether by one or both of said methods, or a combination thereof, shall be voted by said board of supervisors annually and shall be certified to the board of county commissioners of the county wherein said mine drainage district is located on or before the first Monday in November in each year.

(4) In any mining district where there already exists a drainage tunnel which has lowered the water or drained the district to some ascertained level, there shall be no taxation on the net value of ores under the provisions of this article, in respect to any ore taken out of any portion of any mine above the level now drained by any existing tunnel.

(5) The additional levy last mentioned shall not exceed ten percent of the net sales price of such ores, and the moneys so levied and collected from said levy on said net sales price shall be used for the payment of bonds and interest thereon and other expenses of the mine drainage district the same as if it had been collected under the tax levy provided in subsection (1) of this section. Said net sales price shall be computed from the gross sales price after deducting the reasonable cost of haulage from the mine to the railroad or smelter or mill, and railroad freight and smelter or other treatment charges in mill or smelter. In order to effectuate the payment of said royalty, said board may order that all such ore so produced and sold from the mine drainage district shall be shipped under such rules and regulations as the board of supervisors may prescribe, either in the name of the board of supervisors, or with notice to the ore purchaser, smelter, or miller that the said ores are subject to the taxation provided in this section.

(6) It is the duty of the ore purchaser, smelter, or miller to deduct said tax before making settlement with the mine owner, lessee, or other shipper, and to pay the amount of said tax direct to the county treasurer of the county in which said drainage district shall be situated; and it is the duty of the county treasurer to issue proper receipts therefor to the purchaser, smelter, or miller, and to all persons interested in the net proceeds of the ore sale so taxed.

(7) The tax on the net sales price of such ores shall be levied against the mine owner or lessor, and against the lessee, sublessee, or other persons having property rights in said ore, and shall be paid by them respectively in the proportion in which they are respectively interested in the net sales price. Said persons respectively shall file with the board of supervisors proper papers to evidence their respective interest in said net sales price, and if such filings are not made then the board of supervisors shall collect said tax against the owner of the property, or against the owner and lessee as their respective interest may appear from any recorded lease or working contract which is on record in the office of the county clerk and recorder of said county at the date of said levy or tax.

(8) In the event that at the date of said tax there are any valid mining leases on property within the drainage district executed prior to January 30, 1934, said tax shall be apportioned among and paid by the owners, lessors, lessees, or sublessees or other persons in interest in the sale of said ores in the manner provided in subsection (7) of this section. Whenever any such lease or any mining lease is executed after January 30, 1934, and contains a covenant that the lessee shall pay taxes, or general taxes, such covenant shall not be construed to include any special tax authorized by this article; and in such event the mine drainage district taxes shall be apportioned as provided in this section, and said taxes shall not be chargeable against the lessee or sublessee except by express mention of mine drainage district taxes. It is lawful for the parties in interest to contract for and agree among themselves as to their respective liabilities for the mine drainage district taxes, and upon recording such contract or agreement in the office of the county clerk and recorder in the county in which the mine drainage district is situated and serving a copy of said contract or agreement upon the board of supervisors, it is the duty of the board of supervisors to make

such orders as will effectuate the division of the tax liability according to the terms of said contract or agreement.

(9) It is the duty of the county treasurer to carry all taxes collected by him under the provisions of this article in a separate fund in the name of the mine drainage district and to disburse the said funds under the provisions of this article and the orders of the board of supervisors of the mine drainage district; and said funds shall be disbursed only for the lawful purposes of the mine drainage district.

Source: L. 11: p. 512, § 19. C.L. § 3341. L. 33-34, 2nd Ex. Sess., p. 63, § 1. CSA: C. 110, § 234. CRS 53: § 92-28-19. C.R.S. 1963: § 92-28-19.

34-51-118. Collection of taxes. Such levy shall be certified by the clerk under the seal of the district, to the county assessor, and shall be extended upon his books and collected in all respects as provided for the collection of other taxes in the county in which the district is situate. The general revenue laws of this state for the assessment, levying, and collection of taxes, and providing for relief to the taxpayer in cases of erroneous, double, or illegal assessments, except as modified in this section, shall be applicable for the purposes of this article, including the enforcement of penalties and forfeitures for delinquent taxes, except that the duties and functions vested by law in county boards of equalization in reference to general taxes shall be exercised in the case of all taxes levied and collected under this article by the respective boards of supervisors of the various mine drainage districts that may be authorized under this article.

Source: L. 11: p. 512, § 20. C.L. § 3342. CSA: C. 110, § 235. CRS 53: § 92-28-20. C.R.S. 1963: § 92-28-20.

Cross references: For general revenue taxation, see title 39.

34-51-119. Bonds - sales - interest and lien. The board has power to raise money necessary to carry out the system of drainage adopted, and to otherwise accomplish the objects and purposes of this article, by the issue and sale of bonds, bearing interest not to exceed eight percent per annum, payable at the office of the county treasurer, in even sums of not less than five hundred dollars, and such bonds shall be a lien upon all property within the boundaries of the district made taxable under this article. The board may sell bonds from time to time in such quantities as may be necessary to carry out the objects and purposes of this article. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Denver, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board in no event shall sell any of said bonds for less than ninety-five percent of the face value thereof.

Source: L. 11: p. 513, § 21. C.L. § 3343. CSA: C. 110, § 236. CRS 53: § 92-28-21. C.R.S. 1963: § 92-28-21.

34-51-120. Warrants. The county treasurer shall pay out the funds collected as taxes under sections 34-51-117 to 34-51-119, or any funds however acquired, only upon warrants drawn against the same by the mine drainage district, under its corporate seal, signed by the clerk and countersigned by the chairman of the board. Warrants drawn under this article shall be assignable, transferable, and payable in all respects the same as county warrants.

Source: L. 11: p. 513, § 22. C.L. § 3344. CSA: C. 110, § 237. CRS 53: § 92-28-22. C.R.S. 1963: § 92-28-22.

34-51-121. Salaries and per diem. The salary of the clerk shall be fixed by the board. The members of the board shall receive no compensation, except five dollars per day while in actual session, and no member shall receive in the aggregate more than two hundred dollars in any one calendar year.

Source: L. 11: p. 514, § 23. C.L. § 3345. CSA: C. 110, § 238. CRS 53: § 92-28-23. C.R.S. 1963: § 92-28-23.

34-51-122. Collection of tolls. Every mine drainage district has a right to collect tolls for the use of the right-of-way, upon terms fixed by the board, which shall be the same to all parties for like services; to accept compensation for service to adjoining mines outside the district and accept revenue from all parties benefited by any use of the property, assets, or easements of the district. All funds accruing under this section shall be used to diminish the tax rate and any excess of revenue over expenses not held as a sinking fund shall be repaid pro rata to the payers of previous taxes.

Source: L. 11: p. 514, § 24. C.L. § 3346. CSA: C. 110, § 239. CRS 53: § 92-28-24. C.R.S. 1963: § 92-28-24.

34-51-123. Eminent domain. Any mine drainage district has the right to accept deeds for rights-of-way and other easements by gift or upon compensation to be paid, and when reasonable compensation for rights-of-way or other essential easements cannot be agreed upon, the district has the power to exercise the right of eminent domain under the statutes of this state.

Source: L. 11: p. 514, § 25. C.L. § 3347. CSA: C. 110, § 240. CRS 53: § 92-28-25. C.R.S. 1963: § 92-28-25.

Cross references: For eminent domain, see articles 1 to 7 of title 38.

34-51-124. Prior drainage statutes. Nothing in this article shall be construed to repeal the provisions of the statutes of this state concerning drainage, but said statutes shall have no application within the limits of any mine drainage district created under the existing provisions of this article.

Source: L. 11: p. 514, § 26. C.L. § 3348. CSA: C. 110, § 241. CRS 53: § 92-28-26. C.R.S. 1963: § 92-28-26.

ARTICLE 52

Ore Buyers' Licenses

34-52-101 to 34-52-107. (Repealed)

Source: L. 76: Entire article repealed, p. 746, § 1, effective February 20.

Editor's note: This article was numbered as article 29 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 53**Sales of Ore**

34-53-101.	Purchasing ore unlawfully - penalty.	34-53-107.	Notice of adverse claim - action.
34-53-102.	False weights - scales - penalty.	34-53-108.	Injunction - effect of denial.
34-53-103.	Altering value - certificate - penalty.	34-53-109.	Dissolution of injunction.
34-53-104.	Failure to account - penalty.	34-53-110.	Effect of failure to institute action.
34-53-105.	Person in possession of ore deemed owner.	34-53-111.	When purchaser held responsible.
34-53-106.	Purchasing ore in good faith.	34-53-112.	Applicability - bad faith.

34-53-101. Purchasing ore unlawfully - penalty. Any person, association, or corporation, or the agent of any person, association, or corporation, who knowingly purchases, or contracts to purchase, or makes any payment for or on account of any ore which has been taken from any mine or claim, by persons who have taken or may be holding possession of any such mine or claim, contrary to any penal law in force, shall be considered as an accessory after the fact to the unlawful holding or taking of such mine or claim and, upon conviction thereof, shall be subjected to the same punishment to which the principals may be liable.

Source: G.L. § 1961. G.S. § 2510. R.S. 08: § 4239. C.L. § 3353. CSA: C. 110, § 246. CRS 53: § 92-30-1. C.R.S. 1963: § 92-30-1.

34-53-102. False weights - scales - penalty. Any person, association, or corporation, or the agent of any person, association, or corporation, engaged in the business of milling, sampling, concentrating, reducing, shipping, or purchasing ores who keeps or uses any false or fraudulent scales or weights for weighing ore, or who keeps or uses any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: G.L. § 1962. G.S. § 2511. R.S. 08: § 4240. C.L. § 3354. CSA: C. 110, § 247. CRS 53: § 92-30-2. C.R.S. 1963: § 92-30-2.

Cross references: For penalty for use or possession of false weights or measures, see § 18-5-301.

34-53-103. Altering value - certificate - penalty. Any person, corporation, or association, or the agent of any person, corporation, or association, engaged in the milling, sampling, concentrating, reducing, shipping, or purchasing of ores in this state who in any manner knowingly alters or changes the true value of any ores delivered to him, so as to deprive the seller of the result of the correct value of the same, or who substitutes other ores for those delivered to him, or who issues any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value, and total amount paid for any lot of ore purchased, or who, by any secret understanding or agreement with another, issues a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value, and total amount paid for any lot of ore purchased by him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: G.L. § 1963. G.S. § 2512. R.S. 08: § 4241. C.L. § 3355. CSA: C. 110, § 248. CRS 53: § 92-30-3. C.R.S. 1963: § 92-30-3.

34-53-104. Failure to account - penalty. The owner, manager, or agent of any species of quartz mill, arrastra mill, furnace, or cupel, employed in extracting gold from quartz, pyrites, or other minerals, who neglects or refuses to account for, or pay over and deliver, all the proceeds thereof to the owner of such quartz, pyrites, or other mineral, excepting such portion of said proceeds as he or she is entitled to in return for his or her services, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: R.S. p. 232, § 165. G.L. § 765. G.S. § 887. R.S. 08: § 4242. C.L. § 3356. CSA: C. 110, § 249. CRS 53: § 92-30-4. C.R.S. 1963: § 92-30-4. L. 77: Entire section amended, p. 882, § 60, effective July 1, 1979. L. 89: Entire section amended, p. 848, § 125, effective July 1. L. 2002: Entire section amended, p. 1547, § 303, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

This section does not cover failure to pay price of ore purchased at agreed price, as such a construction would bring the section into conflict with § 12 of art. II, Colo. Const., relating to imprisonment for debt. *Robinson v. Aetna Cas. & Sur. Co.*, 99 Colo. 150, 60 P.2d 927 (1936).

Operation of this section is confined to failure to account for and pay over to owner proceeds of ore delivered for treatment. *Robinson v. Aetna Cas. & Sur. Co.*, 99 Colo. 150, 60 P.2d 927 (1936).

34-53-105. Person in possession of ore deemed owner. Any person, association of persons, or corporation in the peaceful possession of any mining claim, under claim or color of title, and engaged in the mining and sale of ores therefrom, as to all persons purchasing such ore, in good faith and without notice, as provided in section 34-53-107, of the claim of any other person, association, or corporation to such mining claim, shall be deemed to be the owner of such ore.

Source: L. 1889: p. 273, § 1. R.S. 08: § 4244. C.L. § 3358. CSA: C. 110, § 251. CRS 53: § 92-30-6. C.R.S. 1963: § 92-30-6.

ANNOTATION

Whether ore is realty or personalty is determined by the dominant factors: What is physical nature of materials, what is relationship between litigants, and what is intent regarding

ultimate disposition of property. *Smith v. El Paso Gold Mines, Inc.*, 720 P.2d 608 (Colo. App. 1985).

34-53-106. Purchasing ore in good faith. Any person who, or association or corporation which, in good faith and in the usual course of business, and without notice, as provided in section 34-53-107, purchases and obtains delivery of any ore from any person, association, or corporation in possession of any mining claim is deemed the owner of such ore, and shall not be subject to any action therefor and for the value thereof by any person, association, or corporation who may ultimately be adjudged to be the owner of such mining claim.

Source: L. 1889: p. 274, § 2. R.S. 08: § 4245. C.L. § 3359. CSA: C. 110, § 252. CRS 53: § 92-30-7. C.R.S. 1963: § 92-30-7.

34-53-107. Notice of adverse claim - action. If any person, association, or corporation is or claims to be the owner or entitled to the possession of any mining claim in the actual possession of some other person, association, or corporation claiming to be the owner or entitled to the possession thereof, and mining and shipping ore therefrom, if he desires to hold purchasers of such ore responsible for the value of such ore, may serve or cause to be served upon such purchaser a notice in writing, setting forth the name of the mining claim, the names of the claimants and owners thereof, the name of the person, association, or corporation mining or shipping ore therefrom, and warning such purchaser that he will be held responsible for all ores purchased and delivered from such mine by such person, association, or corporation, or his heirs and assigns subsequent to the service of such notice. Within five days from and after the service of such notice, the person, association, or corporation serving or causing the same to be served shall institute an action in some court of competent jurisdiction against the person, association, or corporation in possession of such mining claim to enjoin him from the mining or shipment or sale of ores therefrom pending such action and shall at once notify such purchaser of the pendency of such action. If the notice provided for in this section shall be served after such an action has been instituted it shall not be necessary to commence another under the provisions hereof.

Source: L. 1889: p. 274, § 3. R.S. 08: § 4246. C.L. § 3360. CSA: C. 110, § 253. CRS 53: § 92-30-8. C.R.S. 1963: § 92-30-8.

34-53-108. Injunction - effect of denial. The person, association, or corporation bringing or having instituted such action, within thirty days after the service of said notice, shall cause an application for an injunction against the defendant therein to be heard before the court in which the same shall be pending. If the injunction is denied or if the application therefor is not made within said period of thirty days, the notice served shall be held for naught, and all persons shall be at liberty to purchase ores from the mining claim or from the person, association, or corporation in possession of and working the same as aforesaid, as though such notice had never been served.

Source: L. 1889: p. 275, § 4. R.S. 08: § 4247. C.L. § 3361. CSA: C. 110, § 254. CRS 53: § 92-30-9. C.R.S. 1963: § 92-30-9.

Cross references: For injunctions generally, see C.R.C.P. 65.

34-53-109. Dissolution of injunction. If any injunction granted under such application therefor, as provided for in section 34-53-108, is dissolved, all persons shall be at liberty to purchase ores from the mining claims affected thereby, from any person, association, or corporation in possession thereof, and working the same under claim or color of title, and no action shall be brought or maintained against such purchaser for the value thereof, notwithstanding that the title and right of possession of and to such mining claim shall be ultimately adjudged against such person, association, or corporation in possession.

Source: L. 1889: p. 275, § 5. R.S. 08: § 4248. C.L. § 3362. CSA: C. 110, § 255. CRS 53: § 92-30-10. C.R.S. 1963: § 92-30-10.

34-53-110. Effect of failure to institute action. If any person, association, or corporation which has not already brought an action serves a notice upon any purchaser of ores, as provided in section 34-53-107, and fails or neglects to institute an action and apply for an injunction as required in section 34-53-108, said notice is of no effect and the purchaser shall not be bound by anything contained therein. If such an action shall be pending at the time of the giving of such notice the same shall be mentioned therein.

Source: L. 1889: p. 275, § 6. R.S. 08: § 4249. C.L. § 3363. CSA: C. 110, § 256. CRS 53: § 92-30-11. C.R.S. 1963: § 92-30-11.

34-53-111. When purchaser held responsible. Any purchaser of ores who has received the notice provided for in section 34-53-107 and followed or preceded by the commencement of an action and application for an injunction thereunder, as set forth in this article, who continues to purchase and receive ores from the mining claims named in such notice, shall be responsible for the value thereof to the person, association, or corporation who is adjudged to be the owner or entitled to the possession of such mining claims.

Source: L. 1889: p. 275, § 7. R.S. 08: § 4250. C.L. § 3364. CSA: C. 110, § 257. CRS 53: § 92-30-12. C.R.S. 1963: § 92-30-12.

34-53-112. Applicability - bad faith. Sections 34-53-105 to 34-53-112 shall not apply to any ore or ores mined, shipped, or sold in contravention of the terms of sections 34-53-101 to 34-53-103.

Source: L. 1889: p. 276, § 8. R.S. 08: § 4251. C.L. § 3365. CSA: C. 110, § 258. CRS 53: § 92-30-13. C.R.S. 1963: § 92-30-13.

ARTICLE 54

Memoranda of Ore Sales

34-54-101.	Definitions.	34-54-105.	Fictitious statement.
34-54-102.	Sale of ores and minerals.	34-54-106.	Penalty.
34-54-103.	Signed memorandum.	34-54-107.	Application of article. (Repealed)
34-54-104.	Preservation of memorandum.		

34-54-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Person" means any person, partnership, association, or corporation.

Source: L. 17: p. 403, § 6. C.L. § 3381. CSA: C. 110, § 273. CRS 53: § 92-31-6. C.R.S. 1963: § 92-31-6.

34-54-102. Sale of ores and minerals. It is unlawful for any person, whether acting for himself or as agent for another, to sell or to purchase any ores, concentrates, or amalgams bearing gold, silver, tungsten, vanadium, uranium, molybdenum, or other rare minerals, or to sell or purchase gold dust, gold or silver bullion, nuggets, or specimens of a value of ten dollars or more, unless at the time of the sale the vendor shall sign with his true name and deliver to the purchaser a memorandum in which he shall state the date of the sale, his residence, the nature and amount of the article sold, the source from which the vendor obtained the same, and the consideration actually paid.

Source: L. 17: p. 401, § 1. C.L. § 3376. CSA: C. 110, § 268. CRS 53: § 92-31-1. C.R.S. 1963: § 92-31-1.

34-54-103. Signed memorandum. It is unlawful for any person, whether acting for himself or as agent for another, to deliver any of the property specified in section 34-54-102 of the value of ten dollars or more, to any other person as agent, broker, or bailee, unless he, at the time of such delivery, delivers to such agent, broker, or vendor a memorandum signed with his true name in which he shall state the date of the transaction, his residence, the nature and quantity of the property delivered, the source from which he obtained such property, and the purpose for which the delivery is made.

Source: L. 17: p. 402, § 2. C.L. § 3377. CSA: C. 110, § 269. CRS 53: § 92-31-2. C.R.S. 1963: § 92-31-2.

34-54-104. Preservation of memorandum. Every person required to receive a memorandum under the provisions of this article shall carefully preserve the same for a period of at least twelve months.

Source: L. 17: p. 402, § 3. C.L. § 3378. CSA: C. 110, § 270. CRS 53: § 92-31-3. C.R.S. 1963: § 92-31-3. L. 84: Entire section amended, p. 933, § 1, effective February 23.

34-54-105. Fictitious statement. If any person required to execute a memorandum under the provisions of this article signs the same with any other than his true name, or makes any false statement whatsoever therein, he shall be deemed guilty of a violation of the provisions of this article. If any person required by the provisions of this article to receive a memorandum receives the memorandum knowing the same not to be signed with the true name of the person delivering such memorandum, or knowing any statement therein contained to be false, he shall be deemed guilty of a violation of the provisions of this article.

Source: L. 17: p. 402, § 4. C.L. § 3379. CSA: C. 110, § 271. CRS 53: § 92-31-4. C.R.S. 1963: § 92-31-4.

34-54-106. Penalty. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

Source: L. 17: p. 402, § 5. C.L. § 3380. CSA: C. 110, § 272. CRS 53: § 92-31-5. C.R.S. 1963: § 92-31-5.

34-54-107. Application of article. (Repealed)

Source: L. 17: p. 403, § 6. C.L. § 3381. CSA: C. 110, § 273. CRS 53: § 92-31-6. C.R.S. 1963: § 92-31-6. L. 76: Entire section repealed, p. 746, § 1, effective February 20.

OIL AND NATURAL GAS

Conservation and Regulation

ARTICLE 60

Oil and Gas Conservation

34-60-101.	Short title.	34-60-109.	Commission may bring suit.
34-60-102.	Legislative declaration.	34-60-110.	Witnesses - suits for violations.
34-60-103.	Definitions.		
34-60-104.	Oil and gas conservation commission - report - publication.	34-60-111.	Judicial review.
		34-60-112.	Plaintiff post bond.
		34-60-113.	Trial to be advanced.
34-60-104.5.	Director of commission - duties.	34-60-114.	Action for damages.
		34-60-115.	Limitation on actions.
34-60-105.	Powers of commission.	34-60-116.	Drilling units - pooling interests.
34-60-106.	Additional powers of commission - rules.		
		34-60-117.	Prevention of waste - protection of correlative rights.
34-60-107.	Waste of oil or gas prohibited.		
		34-60-118.	Agreements for development and unit operations.
34-60-108.	Rules - hearings - process.		

34-60-118.5.	Payment of proceeds - definitions.	34-60-125.	Mitigation of adverse environmental impacts. (Repealed)
34-60-119.	Production - limitation.	34-60-126.	Credit allowed for prior payment for mitigation of environmental impacts. (Repealed)
34-60-120.	Application of article.	34-60-127.	Reasonable accommodation.
34-60-121.	Violations - penalties.	34-60-128.	Habitat stewardship - rules.
34-60-122.	Expenses - fund created.	34-60-129.	Coalbed methane seepage - fund created - repeal. (Repealed)
34-60-123.	Interstate compact to conserve oil and gas.		
34-60-124.	Oil and gas conservation and environmental response fund.		

34-60-101. Short title. This article shall be known and may be cited as the “Oil and Gas Conservation Act”.

Source: L. 51: p. 662, § 16. CSA: C. 118, § 68(15). CRS 53: § 100-6-19. C.R.S. 1963: § 100-6-19.

ANNOTATION

Law reviews. For article, “Oil and Gas Leasing on Federal Lands: Application of State and Local Laws”, see 12 Colo. Law. 1458 (1983). For article, “Colorado Oil and Gas Conveyancing in Context”, see 56 U. Colo. L. Rev. 495 (1985). For article, “Local Regulation of Oil and Gas Operations in Colorado”, see 22 Colo. Law. 751 (1993). For article, “Home Rule City Regulation of Oil and Gas Development”, see

23 Colo. Law. 2771 (1994). For article, “Perplexing Puzzle: The Colorado Oil and Gas Commission Versus Local Government”, see 27 Colo. Law. 73 (February 1998). For article, “Mixing Surface Development with Oil and Gas Operations Part I”, see 34 Colo. Law. 11 (May 2005). For article, “Mixing Surface Development with Oil and Gas Operations Part II”, see 34 Colo. Law. 11 (June 2005).

34-60-102. Legislative declaration. (1) (a) It is declared to be in the public interest to:

(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources;

(II) Protect the public and private interests against waste in the production and utilization of oil and gas;

(III) Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and

(IV) Plan and manage oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state’s obligation to protect wildlife resources and the hunting, fishing, and recreation traditions they support, which are an important part of Colorado’s economy and culture. Pursuant to section 33-1-101, C.R.S., it is the policy of the state of Colorado that wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.

(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production therefrom.

(2) It is further declared to be in the public interest to assure that producers and consumers of natural gas are afforded the protection and benefits of those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. 3301, and particularly that the oil and gas conservation commission, established by section 34-60-104, be empowered to exercise such powers and authorities as may be delegated to it by the laws or regulations of the United States, including said "Natural Gas Policy Act of 1978", and, in the exercise of such powers and authorities, to make such rules and regulations and to execute such agreements and waivers as are reasonably required to implement such power and authority.

Source: L. 55: p. 656, § 10. CRS 53: § 100-6-22. C.R.S. 1963: § 100-6-22. L. 79: Entire section amended, p. 1319, § 1, effective February 16. L. 94: (1) amended, p. 1978, § 2, effective June 2. L. 2007: (1) amended, p. 1357, § 2, effective May 29; (1) amended, p. 1328, § 1, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 07-1341 and House Bill 07-1298 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 320, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For article, "Prorationing of Natural Gas Production: An Economic Analysis", see 57 U. Colo. L. Rev. 153 (1986). For comment, "The Battle Between the Colorado Oil and Gas Conservation Commission and Local Governments: A Call for a New and Comprehensive Approach", see 76 U. Colo. L. Rev. 561 (2005).

Colorado's public policy reflects federal public policy. The public policy of Colorado regarding the "price and allocation of natural gas" is the policy expressed by congress in the national gas policy act of 1978. *Superior Oil Co. v. Western Slope Gas Co.*, 549 F. Supp. 463 (D. Colo. 1982).

Including indefinite price escalation clauses. The general assembly apparently intended the entire national gas policy act of 1978, including the sections which allow indefinite price escalation clauses in existing intrastate contracts to operate "according to their terms", to exist as the public policy of Colorado. *Superior Oil Co. v. Western Slope Gas Co.*, 549 F. Supp. 463 (D. Colo. 1982).

Favored nations provision in long-term contract for purchase of intrastate gas was not contrary to public policy of Colorado. *Superior Oil Co. v. Western Slope Gas Co.*, 758 F.2d 500 (10th Cir. 1985).

34-60-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "And" includes the word "or" and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

(2) "Commission" means the oil and gas conservation commission.

(3) "Common source of supply" is synonymous with "pool" as defined in this section.

(4) "Correlative rights" means that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply.

(4.3) "Division of parks and wildlife" means the division of parks and wildlife identified in article 9 of title 33, C.R.S.

(4.5) "Exploration and production waste" means those wastes that are generated during the drilling of and production from oil and gas wells or during primary field operations and that are exempt from regulation as hazardous wastes under subtitle c of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 to 6934, as amended.

(5) "Gas" means all natural gases and all hydrocarbons not defined in this section as oil.

(5.5) "Minimize adverse impacts" means to, wherever reasonably practicable:

- (a) Avoid adverse impacts from oil and gas operations on wildlife resources;
- (b) Minimize the extent and severity of those impacts that cannot be avoided;
- (c) Mitigate the effects of unavoidable remaining impacts; and
- (d) Take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.

(6) "Oil" means crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(6.5) "Oil and gas operations" means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

(6.8) "Operator" means any person who exercises the right to control the conduct of oil and gas operations.

(7) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, including the owner of a well capable of producing oil or gas, or both.

(7.1) "Parks and wildlife commission" means the parks and wildlife commission created in section 33-9-101, C.R.S.

(7.5) "Permit" means any permit, sundry notice, notice of intention, or other approval, including any conditions of approval, which is granted, issued, or approved by the commission.

(8) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or any governmental subdivision thereof.

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used in this article.

(10) "Producer" means the owner of a well capable of producing oil or gas, or both.

(10.5) "Surface owner" means any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

(10.7) "Underground natural gas storage cavern" means a facility that stored natural gas in an underground cavern or abandoned mine on or before January 1, 2000. An underground natural gas storage cavern includes all surface or subsurface rights and appurtenances associated with the underground injection, storage, and withdrawal of natural gas, but does not include any compressor stations or pipeline facilities subject to regulation by the public utilities commission or the United States department of transportation.

(11) "Waste", as applied to gas, includes the escape, blowing, or releasing, directly or indirectly into the open air, of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil, or both oil and gas; and the production of gas in quantities or in such manner as unreasonably reduces reservoir pressure or unreasonably diminishes the quantity of oil or gas that ultimately may be produced; excepting gas that is reasonably necessary in the drilling, completing, testing, and in furnishing power for the production of wells.

(12) "Waste", as applied to oil, includes underground waste; inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste; open-pit storage; and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but

excluding storage, other than open-pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale.

(13) “Waste”, in addition to the meanings as set forth in subsections (11) and (12) of this section, means:

- (a) Physical waste, as that term is generally understood in the oil and gas industry;
 - (b) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;
 - (c) Abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom, causing reasonably avoidable drainage between tracts of land or resulting in one or more producers or owners in such pool producing more than his equitable share of the oil or gas from such pool.
- (14) Repealed.
- (15) “Wildlife resources” means fish, wildlife, and their aquatic and terrestrial habitats.

Source: L. 51: pp. 652, 653, §§ 3, 4, 5. CSA: C. 118, §§ 68(3), 68(4), 68(5). L. 52: p. 132, § 1. CRS 53: § 100-6-3. L. 55: p. 649, § 2. C.R.S. 1963: § 100-6-3. L. 94: (4.5), (6.5), (6.8), (7.5), and (10.5) added, p. 1979, § 3, effective June 2. L. 2001: (10.7) added, p. 1303, § 1, effective June 5. L. 2007: (4.3), (5.5), (14), and (15) added, p. 1329, § 2, effective July 1. L. 2011: (4.3) and (14) amended and (7.1) added, (SB 11-208), ch. 293, p. 1394, § 27, effective July 1. L. 2012: (7.1) amended and (14) repealed, (HB 12-1317), ch. 248, p. 1235, § 89, effective June 4.

Editor’s note: Subsection (7.1) was numbered as (1.5) in Senate Bill 11-208 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1994 act enacting subsections (4.5), (6.5), (6.8), (7.5), and (10.5), see section 1 of chapter 317, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For comment on *Union P. R. R. v. Oil & Gas Conservation Comm’n*, 131 Colo. 528, 284 P.2d 242 (1955), appearing below, see 28 Rocky Mt. L. Rev. 140 (1955).

Distinction made in this section between gas produced from gas well and gas produced with oil from oil well is important: No provision is made for the flaring of any gas produced

from a gas well, but as to a well producing oil, or both oil and gas, the prohibition is only against the flaring of an “excessive or unreasonable amount”. *Union P. R. R. v. Oil & Gas Conservation Comm’n*, 131 Colo. 528, 284 P.2d 242 (1955).

Applied in *Baumgartner v. Stremel*, 178 Colo. 209, 496 P.2d 705 (1972).

34-60-104. Oil and gas conservation commission - report - publication. (1) There is hereby created, in the department of natural resources, the oil and gas conservation commission of the state of Colorado.

(2) (a) (I) Effective July 1, 2007, the commission shall consist of nine members, seven of whom shall be appointed by the governor with the consent of the senate and two of whom, the executive director of the department of natural resources and the executive director of the department of public health and environment, shall be ex officio voting members. At least two members shall be appointed from west of the continental divide, and, to the extent possible, consistent with this paragraph (a), the other members shall be appointed taking into account the need for geographical representation of other areas of the state with high levels of oil and gas activity or employment. Three members shall be individuals with substantial experience in the oil and gas industry, and at least two of said three members shall have a college degree in petroleum geology or petroleum engineering; one member shall be a local government official; one member shall have formal training or substantial experience in environmental or wildlife protection; one member shall have formal training or substantial experience in soil conservation or reclamation; and one

member shall be actively engaged in agricultural production and also be a royalty owner. Excluding the executive directors from consideration, no more than four members of the commission shall be members of the same political party:

(II) Subject to paragraph (b) of this subsection (2), nothing in this paragraph (a) shall be construed to require a holdover member of the commission holding office on July 1, 2007, to comply with the provisions of this paragraph (a), as amended, unless such person is reappointed to the commission for another term of office. Nothing in this subparagraph (II) shall alter, impair, or negate the authority of the governor to remove or appoint members of the commission pursuant to paragraph (b) of this subsection (2).

(III) Repealed.

(b) Members of the commission shall be appointed for terms of four years each. The governor may at any time remove any member of the commission, and by appointment the governor shall fill any vacancy on the commission. In case one or more vacancies occur on the same day, the governor shall designate the order of filling vacancies. The members of the commission shall receive a per diem allowance of fifty dollars for each day spent in attendance at commission meetings or hearings and shall be reimbursed for their actual expenses.

(3) The commission shall report to the executive director of the department of natural resources at such times and on such matters as the executive director may require.

(4) Publications of the commission circulated in quantity outside the executive branch are subject to the approval and control of the executive director of the department of natural resources.

Source: L. 51: p. 651, § 2. CSA: C. 118, §68(2). L. 52: p. 130, § 1. CRS 53: § 100-6-2. L. 55: p. 648, § 1. C.R.S. 1963: § 100-6-2. L. 64: p. 158, § 109. L. 68: p. 130, § 146. L. 72: p. 550, § 15. L. 82: (2)(a) and (2)(b) amended, p. 358, § 20, effective April 30. L. 85: (2)(a) amended, p. 1128, § 1, effective July 1. L. 87: (2)(b) amended, p. 912, § 26, effective June 15. L. 90: (2)(a) amended, p. 1545, § 1, effective May 8. L. 91: (2)(a) amended, p. 1415, § 2, effective April 19. L. 94: (2)(a) amended, p. 1979, § 4, effective June 2. L. 2000: (2) amended, p. 754, § 1, effective July 1. L. 2007: (2)(a) amended, p. 1358, § 3, effective May 29. L. 2012: (2)(b) amended, (HB 12-1317), ch. 248, p. 1235, § 90, effective June 4.

Editor's note: Subsection (2)(a)(III)(B) provided for the repeal of subsection (2)(a)(III), effective July 1, 2010. (See L. 2007, p. 1358.)

Cross references: (1) For additional requirements to which publications circulated outside the executive branch are subject, see § 24-1-136.

(2) For the legislative declaration contained in the 1994 act amending subsection (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (2)(a), see section 1 of chapter 320, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For article, "Conservation of Oil Resources — Colorado's Position Today", see 22 Rocky Mt. L. Rev. 489 (1950). For article, "Highlights of the 1955 Colorado Legislative Session — Oil and Gas", see 28 Rocky Mt. L. Rev. 53 (1955). For comment, "The Battle Between the Colorado Oil and Gas Con-

servation Commission and Local Governments: A Call for a New and Comprehensive Approach", see 76 U. Colo. L. Rev. 561 (2005).

Commission is creature of statute, and its authority and power is limited by statute. Union P. R. R. v. Oil & Gas Conservation Comm'n, 131 Colo. 528, 284 P.2d 242 (1955).

34-60-104.5. Director of commission - duties. (1) Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint a director of the commission who shall possess such qualifications as may be established by the executive director, the commission, and the state personnel board.

(2) The director of the commission shall:

- (a) Administer the provisions of this article;
- (b) Enforce the rules and regulations adopted by the commission;
- (c) Implement and administer orders issued by the commission;
- (d) Appoint, pursuant to section 13 of article XII of the state constitution, such clerical and professional staff and consultants as may be necessary for the efficient and effective operation of the commission and shall exercise general supervisory control over said staff; and
- (e) Perform such other functions as may be assigned to him by the commission, including that of appointment as a hearing officer in accordance with section 34-60-106.

Source: L. 84: Entire section added, p. 934, § 1, effective March 26. L. 94: (2)(d) amended, p. 1980, § 5, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(d), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-105. Powers of commission. (1) The commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article. Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn and such authority is unqualifiedly conferred upon the commission, as provided in this section. Any person, or the attorney general on behalf of the state, may apply for any hearing before the commission, or the commission may initiate proceedings upon any question relating to the administration of this article, and jurisdiction is conferred upon the commission to hear and determine the same and enter its rule, regulation, or order with respect thereto.

(2) Repealed.

(3) The attorney general shall be the legal advisor of the commission, and it is his duty to represent the commission in all court proceedings and in all proceedings before it and in any proceedings to which the commission may be a party before any department of the federal government.

Source: L. 51: p. 655, § 7. CSA: C. 118, § 68(7). CRS 53: § 100-6-5. C.R.S. 1963: § 100-6-5. L. 81: (2) repealed, p. 1690, § 3, effective May 21.

ANNOTATION

Law reviews. For article, "Conservation of Oil Resources — Colorado's Position Today", see 22 Rocky Mt. L. Rev. 489 (1950).

This act is a comprehensive statute intended to be exclusive means of regulating development, production, and utilization of gas and oil; whether conflict exists between local regulation and statutory scheme is irrelevant in determining validity of local regulation. *Oborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

General assembly has power to delegate to

commission certain powers and authority with reference to the administration of any legislation concerning oil and gas. *Union P. R. R. v. Oil & Gas Conservation Comm'n*, 131 Colo. 528, 284 P.2d 242 (1955).

Rule of commission preempted county regulation imposing financial requirements on operators, where county regulation created an operational conflict with the commission's bonding and fine assessment procedures. *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC*, 159 P.3d 773 (Colo. App. 2006).

34-60-106. Additional powers of commission - rules. (1) The commission also has authority to require:

- (a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, and structures;
- (b) The making and filing with the commission of copies of well logs, directional

surveys, and reports on well location, drilling, and production; except that logs of exploratory or wildcat wells marked "confidential" shall be kept confidential for six months after the filing thereof, unless the operator gives written permission to release such logs at an earlier date;

(c) The drilling, casing, operation, and plugging of seismic holes or exploratory wells in such manner as to prevent the escape of oil or gas from one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, salt water, or brackish water; and measures to prevent blowouts, explosions, cave-ins, seepage, and fires;

(d) (Deleted by amendment, L. 94, p. 1980, § 6, effective June 2, 1994.)

(e) That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state, for a period of five years, complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission, or its agents, at all reasonable times within said period and that every such person shall file with the commission such reasonable reports as it may prescribe with respect to such oil or gas or the products thereof;

(f) That no operations for the drilling of a well for oil and gas shall be commenced without first giving to the commission notice of intention to drill and without first obtaining a permit from the commission, under such rules and regulations as may be prescribed by the commission, and paying to the commission a filing and service fee to be established by the commission for the purpose of paying the expense of administering this article as provided in section 34-60-122, which fee may be transferable or refundable, at the option of the commission, if such permit is not used; but no such fee shall exceed two hundred dollars;

(g) That the production from wells be separated into gaseous and liquid hydrocarbons and that each be accurately measured by such means and standards as prescribed by the commission;

(h) The operation of wells with efficient gas-oil and water-oil ratios, the establishment of these ratios, and the limitation of the production from wells with inefficient ratios;

(i) Certificates of clearance in connection with the transportation and delivery of oil and gas or any product; and

(j) Metering or other measuring of oil, gas, or product in pipelines, gathering systems, loading racks, refineries, or other places.

(2) The commission has the authority to regulate:

(a) The drilling, producing, and plugging of wells and all other operations for the production of oil or gas;

(b) The shooting and chemical treatment of wells;

(c) The spacing of wells; and

(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

(3) The commission also has the authority to:

(a) Limit the production of oil or gas, or both, from any pool or field for the prevention of waste, and to limit and to allocate the production from such pool or field among or between tracts of land having separate ownerships therein, on a fair and equitable basis so that each such tract will be permitted to produce no more than its just and equitable share from the pool and so as to prevent, insofar as is practicable, reasonably avoidable drainage from each such tract which is not equalized by counter-drainage; and

(b) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this article.

(3.5) The commission shall require the furnishing of reasonable security with the commission by lessees of land for the drilling of oil and gas wells, in instances in which the owner of the surface of lands so leased was not a party to such lease, to protect such owner from unreasonable crop losses or land damage from the use of the premises by said lessee. The commission shall require the furnishing of reasonable security with the commission, to

restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with the owner of the surface of lands so leased.

(4) The grant of any specific power or authority to the commission shall not be construed in this article to be in derogation of any of the general powers and authority granted under this article.

(5) The commission shall also have power to make determinations, execute waivers and agreements, grant consent to delegations, and take other actions required or authorized for state agencies by those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., including the power to give written notice of administratively final determinations.

(6) The commission has the authority, as it deems necessary and convenient, to conduct any hearings or to make any determinations it is otherwise empowered to conduct or make by means of an appointed hearing officer, but recommended findings, determinations, or orders of any hearing officer shall not become final until adopted by the commission. Upon appointment by the commission, a member of the commission may act as a hearing officer.

(7) The commission has the authority to establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. No such fees shall exceed two hundred dollars for any application, petition, or other pleading initiating a proceeding nor one hundred dollars for any protest or other responsive pleadings, and any party to any commission proceeding shall pay no more than one such fee for each proceeding in which it is a party. All such fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and shall be subject to appropriations by the general assembly for the purposes of this article.

(8) The commission shall prescribe special rules and regulations governing the exercise of functions delegated to or specified for it under the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., or such other laws or regulations of the United States which affect the price and allocation of natural gas and crude oil in accordance with the provisions of this article.

(9) Notwithstanding the provisions of section 34-60-120 or any other provision of law, the commission, as to class II injection wells defined in 40 CFR 144.6b, shall also have the power to perform all acts for the purpose of protecting underground sources of drinking water in accordance with state programs authorized by 42 U.S.C. sec. 300f et seq. and regulations thereunder in effect or as may be amended.

(10) The commission shall promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well; except that the commission shall not adopt such rules and regulations with regard to parties or requirements regulated under the federal "Occupational Safety and Health Act of 1970".

(11) (a) By July 16, 2008, the commission shall:

(I) (A) Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.

(B) Repealed.

(II) Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission's decision-making process. This rule-making shall be coordinated with the rule-making required in section 34-60-128 (3) (d) so that the timely and efficient procedure established pursuant to this subsection (11) is applicable to the department and to the division of parks and wildlife.

(b) (I) The general assembly shall review the rules promulgated pursuant to paragraph (a) of this subsection (11) acting by bill pursuant to section 24-4-103, C.R.S., and reserves the right to alter or repeal such rules.

(II) By January 1, 2008, the commission shall promulgate rules to ensure the accuracy of oil and gas production reporting by establishing standards for wellhead oil and gas measurement and reporting. At a minimum, the rules shall address engineering standards, heating value, specific gravity, pressure, temperature, meter certification and calibration,

and methodology for sales reconciliation to wellhead meters. The rules shall be consistent with standards established by the American society for testing and materials, the American petroleum institute, the gas processors association, or other applicable standards-setting organizations, and shall not affect contractual rights or obligations.

(12) The commission, in consultation with the state agricultural commission and the commissioner of agriculture, shall promulgate rules to ensure proper reclamation of the land and soil affected by oil and gas operations and to ensure the protection of the topsoil of said land during such operations.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling any obligation imposed under subsections (11), (12), and (17) of this section. For purposes of this subsection (13), references to "operator" shall include an operator of an underground natural gas storage cavern and an applicant for a certificate of closure under subsection (17) of this section. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net worth to guarantee performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section. Such guarantee and demonstration of net worth shall be annually reviewed by the commission.

(b) A certificate of general liability insurance in a form acceptable to the commission which names the state as an additional insured and which covers occurrences during the policy period of a nature relevant to an obligation imposed by rule under subsections (11), (12), and (17) of this section;

(c) A bond or other surety instrument;

(d) A letter of credit, certificate of deposit, or other financial instrument;

(e) An escrow account or sinking fund dedicated to the performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section;

(f) A lien or other security interest in real or personal property of the operator. Such lien or security interest shall be in a form and priority acceptable to the commission in its sole discretion and shall be reviewed annually by the commission.

(14) Before an operator commences operations for the drilling of any oil or gas well, such operator shall evidence its intention to conduct such operations by giving the surface owner written notice describing the expected date of commencement, the location of the well, and any associated roads and production facilities. Unless excepted by the commission due to exigent circumstances or waived by the surface owner, such notice of drilling shall be mailed or delivered to the surface owner not less than thirty days prior to the date of estimated commencement of operations with heavy equipment. The notice of drilling shall also be provided to the local government in whose jurisdiction the well is located if such local government has registered with the commission for receipt thereof.

(15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract; except that no such assignment shall allow for the imposition of any new tax or fee by the assignee in order to conduct such assigned inspection and monitoring, and no such assignment shall provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee. No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in this subsection (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.

(16) The commission has the authority to establish, charge, and collect fees for services it provides, including but not limited to the sale of computer disks and tapes.

(17) (a) The commission has exclusive authority to regulate the public health, safety, and welfare aspects, including protection of the environment, of the termination of operations and permanent closure, referred to in this subsection (17) collectively as "closure", of an underground natural gas storage cavern.

(b) No underground natural gas storage cavern may be closed unless the operator has secured a certificate of closure from the commission. The commission shall issue a certificate of closure if the applicant demonstrates that its closure plan protects public health, safety, and welfare, including protection of the environment.

(c) Before submitting its application, an applicant for a certificate of closure must, to the extent such owners are reasonably identifiable from public records, notify all owners of property, both surface and subsurface, occupied by and immediately adjacent to the underground natural gas storage cavern of the applicant's intent to submit a closure plan. "Immediately adjacent to" means contiguous to the boundaries of the underground natural gas storage cavern. The notice shall advise the owners of a location where a full copy of the closure plan may be inspected, that written comments may be submitted to the commission, and that they may participate in the public hearing required by this subsection (17). The applicant shall notify the owners of the date, time, and place of the public hearing. Contemporaneously with notifying the owners, the applicant shall send a copy of the notice to registered homeowners' associations that have submitted a written request for such notice prior to the filing of the application with the commission and the board of county commissioners in the county where the underground natural gas storage cavern is located.

(d) The commission shall provide the public with notice and an opportunity to comment on an application filed under this subsection (17) for a certificate of closure pursuant to the procedures set forth in section 34-60-108 (7). The applicant shall attend the public hearing and shall be available at other reasonable times as the director may request to respond to comments and questions.

(e) The director may consult with other state agencies possessing expertise in matters related to closure of underground natural gas storage caverns in the areas of the jurisdiction of such agencies, including, but not limited to, safety, environmental protection, public health, water resources, and geology. Agencies consulted under this subsection (17) may include, but are not limited to, the public utilities commission, the division of reclamation, mining, and safety, the Colorado geological survey, the division of water resources, and the department of public health and environment. Any agency consulted shall provide advice and assistance with respect to matters within its expertise.

(f) The commission may attach conditions to its certificate of closure, including requiring reasonable recovery of residual natural gas, if the commission determines that such conditions are technically feasible and necessary to ensure compliance with the requirements of this subsection (17), taking into consideration cost-effectiveness. If the closure application requires the abandonment of wells and reclamation of well sites associated with the underground natural gas storage cavern, the commission shall attach conditions to its certificate of closure requiring that such well abandonment and reclamation occur in a manner consistent with applicable commission rules.

(g) The commission may, subject to the limitations contained in paragraph (f) of this subsection (17), attach conditions to its certificate of closure requiring:

(I) Reasonable post-closure monitoring and site security at a closed underground natural gas storage cavern; and

(II) That the applicant for the certificate of closure will perform post-closure corrective actions consistent with this subsection (17), including, but not limited to, the limitations contained in paragraph (f) of this subsection (17) if any such post-closure monitoring establishes that the closure does not protect public health, safety, or welfare, including protection of the environment.

(h) The commission shall require that the applicant for a certificate of closure provide reasonable assurance that it is financially capable of fulfilling any obligation imposed under this subsection (17) including, but not limited to, post-closure corrective action required by paragraph (g) of this subsection (17), in accordance with subsection (13) of this section.

(i) The applicant for a certificate of closure under this subsection (17) shall reimburse the commission's reasonable and necessary costs of reviewing and acting on the application. Such reimbursement shall include:

(I) Reimbursement to the commission, its staff, and any agencies consulted under this subsection (17) for the reasonable cost of the time required to review the application, at a rate commensurate with the hourly compensation of the staff employee performing the

actual work, but not to exceed the hourly compensation of the highest paid commission staff employee, based on the employee's annual salary divided by two thousand eighty hours; and

(II) Reimbursement of the reasonable cost to the commission of hiring one or more private consultants to review the application and provide advice to the commission as a result of such review, if the applicant consents in writing to the scope and expected range of costs of the activities to be undertaken by each such private consultant. If the commission and applicant cannot agree on the scope or expected range of costs and if the commission determines a private consultant is necessary in the review of the application, then the commission may hire a private consultant at its own expense.

Source: **L. 51:** p. 660, § 11. **CSA:** C. 118, § 68(11). **CRS 53:** § 100-6-15. **L. 55:** p. 654, § 8. **C.R.S. 1963:** § 100-6-15. **L. 64:** p. 509, § 1. **L. 73:** p. 1071, § 1. **L. 77:** (3.5) added, p. 1565, § 1, effective July 1. **L. 79:** (5) to (8) added, p. 1320, § 2, February 16. **L. 81:** (9) added, p. 1339, § 4, effective July 1; (9) amended, p. 2034, § 53, effective July 14. **L. 85:** (10) and (11) added, p. 1129, § 1, effective July 1. **L. 86:** (12) added, p. 1073, § 1, effective April 3. **L. 91:** (1)(f) and (9) amended, p. 1415, § 3, effective April 19. **L. 94:** (1)(d), (2)(d), (11), and (12) amended and (13), (14), (15), and (16) added, p. 1980, § 6, effective June 2. **L. 96:** (15) amended, p. 346, § 1, effective April 17. **L. 2001:** IP(13), (13)(a), (13)(b), and (13)(e) amended and (17) added, pp. 1303, 1304, §§ 2, 3, effective June 5; (14) amended, p. 491, § 6, effective July 1. **L. 2005:** (7) amended, p. 733, § 3, effective July 1. **L. 2006:** (17)(e) amended, p. 218, § 16, effective August 7. **L. 2007:** (2)(d) and (11) amended, pp. 1358, 1359, §§ 4, 6, effective May 29; (11) amended, p. 1344, § 1, effective May 29. **L. 2008:** IP(11)(a), (11)(a)(II), and (11)(b)(I) amended, p. 1033, § 1, effective May 21; (11)(a)(II) amended, p. 1912, § 122, effective August 5.

Editor's note: (1) Amendments to subsection (11)(a)(II) by House Bill 08-1379 and House Bill 08-1412 were harmonized.

(2) Subsection (11)(a)(I)(B) provided for the repeal of subsection (11)(a)(I)(B), effective July 1, 2010. (See L. 2007, p. 1359.)

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsections (1)(d), (2)(d), (11), and (12) and enacting subsections (13), (14), (15), and (16), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsections (2)(d) and (11), see section 1 of chapter 320, Session Laws of Colorado 2007.

(2) For the federal "Occupational Safety and Health Act of 1970", see 29 U.S.C. 651 et seq.

ANNOTATION

Law reviews. For article, "State Law as a Limit on Local Regulation of the Mineral Industry", see 15 Colo. Law. 1657 (1986). For article, "Accommodation Between Surface Development and Oil and Gas Drilling", see 24 Colo. Law. 1323 (1995).

Board of county commissioners lacked authority to deny application for permit to drill exploratory oil well on basis that applicant refused to meet board's conditions since those conditions covered subjects under exclusive regulatory authority of state oil and gas conservation commission. *Oborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989) (decided under law in effect prior to 1986 amendment).

Plaintiff had standing to seek declaratory judgment where allegations in complaint, along

with other evidence on issue of standing, established that regulatory scheme threatened to cause injury to the plaintiff's present or imminent activities. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

The Oil and Gas Conservation Act does not expressly or impliedly preempt any and all aspects of a county's authority to enact land-use regulations applicable to oil and gas development and operational activities within the county; although, to the extent that operational conflicts might exist, the county regulations must yield to the state interest. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992); *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

County regulation requiring oil and gas operators to keep records open for inspection

by the county was preempted by this section, which excludes the county by omission as an entity authorized to inspect records under subsection (1)(e). *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

County regulations pertaining to matters mentioned in this section are not necessarily preempted. The trial court erred in holding such regulations facially invalid and, instead, should have conducted an evidentiary hearing to determine whether the county regulations created an operational conflict with state law. *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

Federal law does not preempt state or local regulation of oil and gas operations. *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006).

State's interest in efficient oil and gas development and production as manifested in the Oil and Gas Conservation Act preempts a home-rule city from totally excluding all drilling operations within city limits. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

While the Oil and Gas Conservation Act does not totally preempt a home-rule city's exercise of land-use authority over oil and gas development and operations within the territorial limits of the city, the statewide interest in the efficient development and production of oil and gas resources in a manner calculated to prevent waste, as well as in protecting the correlative rights of owners and producers in a common pool or source to a just and equitable share of the profits of production, prevents a home-rule city from exercising its land-use au-

thority so as to totally ban the drilling of oil, gas, or hydrocarbon wells within the city. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

Both the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations and the imposition of penalties, safety regulations, and land restoration requirements that are contrary to those required by state law are preempted due to operational conflict with state law; however, the local land use permit requirement does not conflict with state law, as it merely delays but does not prevent oil and gas development, and is explicitly contemplated by statute. *Town of Frederick v. N. Am. Res. Co.*, 60 P.3d 758 (Colo. App. 2002).

Commission's regulation that states that permits to drill shall be binding with respect to "any conflicting local governmental permit or land use approval process" is overly broad and void where it conflicts with law providing that oil and gas rules preempt county regulations only when the operational effect of the county regulations conflicts with the application of the state oil and gas statute or state regulations. *Bd. of County Comm'rs v. Colo. Oil & Gas Conservation Comm'n*, 81 P.3d 1119 (Colo. App. 2003).

Rule that precluded nongovernmental third parties from requesting hearings on permit applications, though otherwise authorized by this section, conflicted with § 34-60-108. *Grand Valley Citizens' Alliance v. Colo. Oil & Gas Conservation Comm'n*, __ P.3d __ (Colo. App. 2010).

Applied in *Gillespie v. Simpson*, 41 Colo. App. 577, 588 P.2d 890 (1978).

34-60-107. Waste of oil or gas prohibited. The waste of oil and gas in the state of Colorado is prohibited by this article.

Source: L. 51: p. 651, § 1. CSA: C. 118, § 68(1). CRS 53: § 100-6-1. C.R.S. 1963: § 100-6-1.

ANNOTATION

Law reviews. For article, "Conservation of Oil Resources — Colorado's Position Today", see 22 Rocky Mt. L. Rev. 489 (1950). For article, "Utilization Statutes: Voluntary Action or Compulsion", see 24 Rocky Mt. L. Rev. 29 (1951). For note, "The Colorado Oil and Gas Conservation Act and Amendments", see 24 Rocky Mt. L. Rev. 348 (1952). For article, "Breach of the Implied Covenant in an Oil and Gas Lease", see 31 Dicta 215 (1954). For article, "The Application of State Conservation Laws to Oil and Gas Operations on the Public Domain", see 32 Rocky Mt. L. Rev. 109 (1960). For article, "Prorating of Natural Gas Pro-

duction: An Economic Analysis", see 57 U. Colo. L. Rev. 153 (1986).

This section does not prohibit all waste, but only waste as defined in section 34-60-103. *Union P. R. R. v. Oil & Gas Conservation Comm'n*, 131 Colo. 528, 284 P.2d 242 (1955).

So some gas escape or release is permitted; only excessive or unreasonable amounts are prohibited. *Union P. R. R. v. Oil & Gas Conservation Comm'n*, 131 Colo. 528, 284 P.2d 242 (1955).

And flaring of gas not entirely forbidden. The flaring of such amounts of gas as will not unreasonably diminish the amount of oil or gas

that might be produced is expressly allowed under § 34-60-103. Union P. R. v. Oil & Gas

Conservation Comm'n, 131 Colo. 528, 284 P.2d 242 (1955).

34-60-108. Rules - hearings - process. (1) The commission shall prescribe rules and regulations governing the practice and procedure before it.

(2) No rule, regulation, or order, or amendment thereof, shall be made by the commission without a hearing upon at least twenty days' notice, except as provided in this section. The hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found by the commission to exist, it is authorized to issue an emergency order without notice of hearing, which shall be effective upon promulgation, but no such order shall remain effective for more than fifteen days.

(4) Any notice required by this article, except as provided in this section, shall be given by the commission either by mailing a copy thereof, postage prepaid, to the last known mailing address of the person to be given notice, or by personal service. In addition, the commission shall cause one publication of such notice, at least ten days prior to the hearing, in a newspaper of general circulation in the city and county of Denver and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall issue in the name of the state, shall be signed by the commission or the secretary of the commission, shall specify the style and number of the proceeding and the time and place at which the hearing will be held, shall state the time within which protests to the granting of a petition shall be filed if a petition has been filed, and shall briefly state the purpose of the proceeding. Should the commission elect or be required to give notice by personal service, such service may be made by any officer authorized to serve summons or by any agent of the commission in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of service by such agent shall be by his affidavit, and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where there is an application for the entry of a pooling order or unitization order, or an application for an exception from an established well spacing pattern, or a complaint is made by the commission or any party that any provision of this article, or any rule, regulation, or order of the commission, is being violated, notice of the hearing to be held on such application or complaint shall be served on the interested parties either by mail as provided in this subsection (4) or in the same manner as is provided in the Colorado rules of civil procedure for the service of process in civil actions in the district courts of this state.

(5) Any person who believes that he may be an interested party in any proceeding before the commission may file with the commission a request for notices, and thereafter for a period as determined by the commission, not to exceed three years, such person shall be entitled to receive notice by mail of the filing of all petitions upon which a hearing may be held. The filing of a request for notices by a person shall be deemed to be a consent by that person to service of notice by mail at the address shown on the request filed by him in those proceedings in which notice by mail may be given. A request for notices filed under provisions of this subsection (5) may be withdrawn or a new request filed at any time by the person filing the same.

(6) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full in books kept by the commission for that purpose, shall be indexed, shall show the date on which such entry was made in the books, which date shall be the date of entry for the purpose of section 34-60-111, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the commission shall include or be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner provided by this section. A copy of any rule, regulation, finding of fact, or order, certified by the commission or by its secretary, shall be received in evidence in all courts of this state with the same effect as the original.

(7) The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the

commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the filing of the petition and of the date for the hearing thereon to be given. Any interested party desiring to protest the granting of the petition shall, at least three days prior to the date of the hearing, file a written protest with the commission, which shall briefly state the basis of the protest. Upon a showing that all interested parties have consented in writing to the granting of the petition without a hearing, the commission may enter an order granting the petition forthwith and without a hearing. In all other cases, the hearing shall be held at the time and place specified in the notice, and all persons who have filed a timely protest shall be given full opportunity to be heard. If no protest to the granting of the petition has been made, the commission may enter an order based upon the facts stated in the verified petition, without the necessity of taking testimony or the making of a record. The commission shall enter its order within thirty days after the hearing. Any person affected by any order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same.

(8) Any person who files a protest with the commission pursuant to the provisions of subsection (7) of this section shall at the same time serve a copy thereof on the person filing the petition. Such service shall be made by mailing a copy of the protest, postage prepaid, to the petitioner.

Source: L. 51: p. 655, § 8. CSA: C. 118, § 68(8). CRS 53: § 100-6-7. L. 55: p. 653, § 5. C.R.S. 1963: § 100-6-7. L. 65: p. 898, § 2. L. 69: p. 874, § 1. L. 77: (4) amended, p. 1566, § 1, effective May 24. L. 94: (2) amended, p. 1982, § 7, effective June 2.

Cross references: (1) For rule-making procedures, see article 4 of title 24; for rules concerning service of summons and proof thereof, see C.R.C.P. 4.

(2) For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 317, Session Laws of Colorado 1994.

ANNOTATION

Company which has entered into take or pay contract with natural gas producer may participate in gas well spacing hearing conducted pursuant to oil and gas conservation act. *Williams Natural Gas Co. v. Mesa Operating Limited P'ship*, 778 P.2d 309 (Colo. App. 1989).

Hearing must be held on "any matter" within the commission's jurisdiction on which a petition is filed. The plain language of subsection (7) is more inclusive than other subsections referring to "rules", "regulations", and "orders". Therefore, a petition to intervene and

protest the issuance of a permit triggered the requirement for notice and a hearing under this section. *Grand Valley Citizens' Alliance v. Colo. Oil & Gas Conservation Comm'n*, __ P.3d __ (Colo. App. 2010).

Rule that precluded nongovernmental third parties from requesting hearings on permit applications was in conflict with this section. *Grand Valley Citizens' Alliance v. Colo. Oil & Gas Conservation Comm'n*, __ P.3d __ (Colo. App. 2010).

34-60-109. Commission may bring suit. If it appears that any person fails to comply with an order issued pursuant to section 34-60-121, the commission, through the attorney general, shall bring suit in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant if there is more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. Proceedings for appellate review or any other proceedings for review may be taken from any judgment, decree, or order in any action under this article as provided by law and the Colorado appellate rules, and all proceedings in the trial and appellate court shall have precedence over any other proceedings then pending in such courts. No bonds shall be required of the commission in any such proceeding or review.

Source: L. 51: p. 657, § 9(c). CSA: C. 118, § 68(9)(c). CRS 53: § 100-6-9. L. 55: p. 654, § 6. C.R.S. 1963: § 100-6-9. L. 94: Entire section amended, p. 1982, § 8, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-110. Witnesses - suits for violations. (1) The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. Nothing in this section shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No natural person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to a subpoena; but no person testifying shall be exempted from prosecution and punishment for perjury in the first degree committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may issue an order for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

Source: L. 51: p. 657, § 9. CSA: C. 118, § 68(9). CRS 53: § 100-6-8. C.R.S. 1963: § 100-6-8. L. 72: p. 564, § 37.

34-60-111. Judicial review. Any rule, regulation, or final order of the commission shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S. The commission shall not be required to post bond in any proceeding for judicial review.

Source: L. 51: p. 659, § 10. CSA: C. 118, § 68(10). CRS 53: § 100-6-11. L. 55: p. 654, § 7. C.R.S. 1963: § 100-6-11. L. 81: Entire section R&RE, p. 1689, § 1, effective May 21.

ANNOTATION

Time for filing appeal runs from date order mailed pursuant to § 24-4-106 (16) rather than from date order entered into records of commis-

sion pursuant to § 34-60-108 (6). *Richmond Petroleum v. Oil & Gas Conservation Comm'n*, 907 P.2d 732 (Colo. App. 1995).

34-60-112. Plaintiff post bond. No temporary restraining order or injunction of any kind against the commission or its agents, employees, or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond in such amount and upon such conditions as the court may direct, and such bond is approved by the judge of the court and filed with the clerk of the court. The bond shall be made payable to the state of Colorado, and shall be for the use and benefit of all persons who may be injured by the

acts done under the protection of the restraining order or injunction, if the rule, regulation, or order is upheld. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

Source: L. 51: p. 659, § 10(b). CSA: C. 118, § 68(10)(b). CRS 53: § 100-6-12. C.R.S. 1963: § 100-6-12.

34-60-113. Trial to be advanced. An action, appellate review as provided by law and the Colorado appellate rules, or other proceeding involving a test of the validity of any provision of this article or of a rule, regulation, or order shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted unless deemed imperative by the court.

Source: L. 51: p. 659, § 10(c). CSA: C. 118, § 68(10)(c). CRS 53: § 100-6-13. C.R.S. 1963: § 100-6-13. L. 81: Entire section amended, p. 1689, § 2, effective May 21.

34-60-114. Action for damages. Nothing in this article, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this article, or any rule, regulation, or order issued under this article, shall impair, abridge, or delay any cause of action for damages which any person may have or assert against any person violating any provision of this article, or any rule, regulation, or order issued under this article. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission fails to bring suit to enjoin any actual or threatened violation of this article, or of any rule, regulation, or order made under this article, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party.

Source: L. 51: p. 657, § 9(d). CSA: C. 118, § 68(9)(d). CRS 53: § 100-6-10. C.R.S. 1963: § 100-6-10.

ANNOTATION

This section does not create a private cause of action for a person damaged by another's violation of the Oil & Gas Conservation Act or

a rule of the oil & gas conservation commission. *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913 (Colo. 1997).

34-60-115. Limitation on actions. No action or other proceeding based upon a violation of this article or any rule, regulation, or order of the commission shall be commenced or maintained unless it has been commenced within one year from the date of the alleged violation.

Source: L. 51: p. 660, § 10(d). CSA: C. 118, § 68(10)(d). CRS 53: § 100-6-14. C.R.S. 1963: § 100-6-14.

34-60-116. Drilling units - pooling interests. (1) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, has the power to establish drilling units of specified and approximately uniform size and shape covering any pool.

(2) In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the commission from the evidence introduced at the

hearing; except that, when found to be necessary for any of the purposes mentioned in subsection (1) of this section, the commission is authorized to divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone, so that the pool as a whole will be efficiently and economically developed, but no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well. If the commission is unable to determine, based on the evidence introduced at the hearing, the existence of a pool and the appropriate acreage to be embraced within a drilling unit and the shape thereof, the commission is authorized to establish exploratory drilling units for the purpose of obtaining evidence as to the existence of a pool and the appropriate size and shape of the drilling unit to be applied thereto. In establishing the size and shape of the exploratory drilling unit, the commission may consider, but is not limited to, the size and shape of drilling units previously established by the commission for the same formation in other areas of the same geologic basin. Any spacing regulation made by the commission shall apply to each individual pool separately and not to all units on a statewide basis.

(3) The order establishing drilling units shall permit only one well to be drilled and produced from the common source of supply on a drilling unit, and shall specify the location of the permitted well thereon, with such exception for the location of the permitted well as may be reasonably necessary for wells already drilled or where it is shown upon application, notice, and hearing, and the commission finds, that the drilling unit is located partly outside the pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the unit would be inequitable or unreasonable. The commission shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and include in the order suitable provisions to prevent the production from the drilling unit of more than its just and equitable share of the oil and gas in the pool.

(4) The commission, upon application, notice, and hearing, may decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units in order to prevent or assist in preventing waste or to avoid the drilling of unnecessary wells, or to protect correlative rights, and the commission may enlarge the area covered by the order fixing drilling units, if the commission determines that the common source of supply underlies an area not covered by the order.

(5) After an order fixing drilling units has been entered by the commission, the commencement of drilling of any well into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.

(6) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(7) (a) Each such pooling order shall make provision for the drilling of a well on the drilling unit, if not already drilled, for the operation thereof, and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision and storage. Except as provided in paragraph (c) of this subsection (7), as to each nonconsenting owner who refuses to agree to bear his proportionate share of the costs and risks of drilling and

operating the well, the order shall provide for reimbursement to the consenting owners who pay for the drilling and operation of the well of the nonconsenting owner's share of the costs and risks of such drilling and operating out of, and only out of, production from the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such costs, the commission shall determine the proper costs as specified in paragraph (b) of this subsection (7). The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to his interest in the drilling unit and, unless he has agreed otherwise, his proportionate part of the nonconsenting owner's share of such production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to his interest in the unit after the consenting owners have recovered the nonconsenting owner's share out of production.

(b) Upon the determination of the commission, proper costs recovered by the consenting owners of a drilling unit from the nonconsenting owner's share of production from such a unit shall be as follows:

(I) One hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping) plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered such costs. It is the intent that the nonconsenting owner's share of these costs of equipment and operation will be that interest which would have been chargeable to the nonconsenting owner had he initially agreed to pay his share of the costs of the well from the beginning of the operation.

(II) Two hundred percent of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A nonconsenting owner of a tract in a drilling unit which is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a landowner's proportionate royalty of twelve and one-half percent until such time as the consenting owners recover, only out of the nonconsenting owner's proportionate seven-eighths share of production, the costs specified in paragraph (b) of this subsection (7). After recovery of such costs, the nonconsenting owner shall then own his proportionate eight-eighths share of the well, surface facilities, and production and then be liable for further costs as if he had originally agreed to drilling of the well.

(d) No order pooling an unleased nonconsenting mineral owner shall be entered by the commission under the provisions of subsection (6) of this section over protest of such owner until the commission shall have received evidence that such unleased mineral owner shall have been tendered a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time application for such order is made and that such unleased mineral owner shall have been furnished in writing such owner's share of the estimated drilling and completion cost of the well, the location and objective depth of the well, and the estimated spud date for the well or range of time within which spudding is to occur. During the period of cost recovery provided in this subsection (7), the commission shall retain jurisdiction to determine the reasonableness of costs of operation of the well attributable to the interest of such nonconsenting owner.

(8) The operator of a well under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of production during the preceding month. If the consenting owners recover the costs specified in subsection (7) of this section, the nonconsenting owner shall own the same interest in the well and the production therefrom, and be liable for the further costs of the operation, as if he had participated in the initial drilling operation.

and (8) amended, p. 1568, § 1, effective June 1. **L. 81:** (7)(c) R&RE, p. 1691, § 1, effective July 1. **L. 88:** (7)(d) added, p. 1216, § 1, effective April 4. **L. 91:** (2) amended, p. 1414, § 1, effective April 19.

ANNOTATION

Law reviews. For note, "Production from Compulsory Pooled Unit Extends Lease on Outside Acreage?", see 33 Rocky Mt. L. Rev. 184 (1961). For article, "Forced Pooling in the Rockies: Penalizing the Hold-out", see 13 Colo. Law. 634 (1984).

Neither the cost nor the benefit of taxes should be taken into account when determining payout. San Juan Basin Consortium, Ltd. v. EnerVest San Juan Acquisition Ltd. P'ship, 67 F. Supp.2d 1213 (D. Colo. 1999).

The rule of capture applies on a tract with split ownership that has not been pooled. A

nonoperating owner has no right to damages for or an injunction against mineral trespass but may drill an offset well or seek a pooling order when the commission had issued an order establishing an 80-acre drilling unit and the order allowed operators to drill another well on an undrilled 40-acre tract if the 80-acre tract is not sufficient to drain the formation. INB Land & Cattle, LLC v. Kerr-McGee Rocky Mtn. Corp., 190 P.3d 806 (Colo. App. 2008).

34-60-117. Prevention of waste - protection of correlative rights. (1) The commission has authority to prevent waste and protect correlative rights of all owners in every field or pool, and when necessary shall limit the production of oil and gas in any field or pool in the exercise of this authority.

(2) If the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonably avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

(3) The commission shall give due regard to the fact that gas produced from oil pools is to be regulated and restricted in a manner as will protect the reasonable use of its energy for oil production.

(4) Each person purchasing or taking for transportation oil or gas from any owner or producer shall purchase or take ratably, without discrimination in favor of any owner or producer over any other owner or producer in the same common source of supply offering to sell his oil or gas produced therefrom to such person. If two or more persons purchase or take for transportation oil or gas from any common source of supply in quantities such that any tract of land of separate ownership is not producing its just and equitable share from the pool, the person purchasing or taking from the tract producing more than its just and equitable share shall, upon the proper offer to sell being made, reduce the amount purchased or taken from such tract and purchase from each tract not producing its just and equitable share so that each tract of land may produce its just and equitable share of production from the pool. In the event that any such purchaser or person taking oil or gas for transportation is likewise a producer or owner, he is prohibited from discriminating in favor of his own production or storage, or production or storage in which he may be interested, and his own production and storage shall be treated as that of any other producer or owner; but no owner or producer, who is also a purchaser of oil and gas, or who has a market for his oil and gas or either thereof, has the right to invoke the benefits of this section.

Source: **L. 51:** p. 655, § 7. **CSA:** C. 118, § 68(7). **L. 52:** p. 131, § 4. **CRS 53:** § 100-6-6. **L. 55:** p. 650, § 3. **C.R.S. 1963:** § 100-6-6.

ANNOTATION

Law reviews. For article, "Prorating of Natural Gas Production: An Economic Analysis", see 57 U. Colo. L. Rev. 153 (1986).

34-60-118. Agreements for development and unit operations. (1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or for carrying on any other methods of unit or cooperative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest for conservation or is reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Any such agreement entered into prior to July 1, 1951, for any such purpose is approved.

(2) The commission upon the application of any interested person shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field.

(3) The commission shall make an order providing for the unit operation of a pool or part thereof if it finds that:

(a) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas; and

(b) The value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operations.

(4) The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(a) A description of the pool, or parts thereof, to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the commission shall determine the relative value, from evidence introduced at the hearing, of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations. The commission shall require the production of or may itself produce such geological, engineering, or other evidence, at the hearing or at any continuance thereof, as may be required to protect the interests of all interested persons. The production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

(d) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(e) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such costs;

(f) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such person's share of the production;

(g) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such person;

(h) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(i) Such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights.

(5) No order of the commission providing for unit operations shall become effective unless the plan for unit operations prescribed by the commission has been approved in writing by those persons who, under the commission's order, will be required to pay at least eighty percent of the costs of the unit operation, and also by the owners of at least eighty percent of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the commission has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the commission shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall be ineffective and shall be revoked by the commission unless for good cause shown the commission extends said time.

(6) An order providing for unit operations may be amended by an order made by the commission in the same manner and subject to the same conditions as an original order providing for unit operations; but if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payment, and other such interests which are free of costs shall not be required. No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in such tract.

(7) The commission, by an order, may provide for the unit operation of a pool, or parts thereof, that embraces a unit area established by a previous order of the commission. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

(8) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

(9) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the commission.

(10) The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

(12) Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations under this article, shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Source: L. 51: p. 660, § 12. CSA: C. 118, § 68(12). CRS 53: § 100-6-16. C.R.S. 1963: § 100-6-16. L. 65: p. 894, § 1.

ANNOTATION

Law reviews. For article, "The Application of State Conservation Laws to Oil and Gas Operations on the Public Domain", see 32 Rocky Mt. L. Rev. 109, cont. 263 (1960).

It was not intention of general assembly to grant to commission power to accomplish

secondary recovery through its compulsory orders. Union P. R. R. v. Oil & Gas Conservation Comm'n, 131 Colo. 528, 284 P.2d 242 (1955).

34-60-118.5. Payment of proceeds - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Payee" means any person or persons legally entitled to payment from proceeds derived from the sale of oil, gas, or associated products from a well in Colorado, but shall not include those interests owned by the state of Colorado.

(b) "Payer" means the first purchaser of oil, gas, or associated products from a well in Colorado unless the first purchaser has entered into an agreement under which the operator of a well has accepted responsibility for making payments to payees, in which case such operator shall be the payer.

(2) (a) Unless otherwise agreed pursuant to paragraph (b) of this subsection (2), payments of proceeds derived from the sale of oil, gas, or associated products shall be paid by a payer to a payee commencing not later than six months after the end of the month in which production is first sold. Thereafter, such payments shall be made on a monthly basis not later than sixty days for oil and ninety days for gas and associated products following the end of the calendar month in which subsequent production is sold. Payments may be made annually if the aggregate sum due a payee for twelve consecutive months is one hundred dollars or less.

(b) The payer and payee may provide, in a valid lease or other agreement, for terms or arrangements for payment that differ from those set forth in paragraph (a) of this subsection (2).

(2.3) Notwithstanding any other applicable terms or arrangements, every payment of proceeds derived from the sale of oil, gas, or associated products shall be accompanied by information that includes, at a minimum:

(a) A name, number, or combination of name and number that identifies the lease, property, unit, or well or wells for which payment is being made;

(b) The month and year during which the sale occurred for which payment is being made;

(c) The total quantity of product sold attributable to such payment, including the units of measurement for the sale of such product;

(d) The price received per unit of measurement, which shall be the price per barrel in the case of oil and the price per thousand cubic feet ("MCF") or per million British thermal units ("MMBTU") in the case of gas;

(e) The total amount of severance taxes and any other production taxes or levies applied to the sale;

(f) The payee's interest in the sale, expressed as a decimal and calculated to at least the sixth decimal place;

(g) The payee's share of the sale before any deductions or adjustments made by the payer or identified with the payment;

(h) The payee's share of the sale after any deductions or adjustments made by the payer or identified with the payment;

(i) An address and telephone number from which additional information may be obtained and questions answered.

(2.5) Upon written request by the payee, submitted to the payer by certified mail, the payer shall provide to the payee within sixty days a written explanation of those deductions or adjustments over which the payer has control and for which the payer has information, whether or not identified with the payment, and, if requested by the payee, such meter calibration testing and production reporting records that are required to be maintained by the payer in accordance with section 34-60-106 (1) (e). The requirement to provide a written explanation of deductions or adjustments shall not preclude the payer from answering the inquiry by referring the payee to the royalty clause or payment provision in a lease or other agreement.

(2.7) A payer who fails to provide information required or requested in accordance with subsection (2.3) or (2.5) of this section shall be subject to penalties as provided in section 34-60-121.

(3) (a) Compliance with the payment deadlines set forth in subsection (2) of this section shall be suspended when payments are withheld for a period of time due to any of the following reasons:

(I) A failure or delay by the payee to confirm in writing the payee's fractional interest in the proceeds after a reasonable request in writing by the payer for such confirmation;

(II) A reasonable doubt by the payer as to the payee's identity, whereabouts, or clear title to an interest in proceeds; or

(III) Litigation that would affect the distribution of payments to a payee.

(b) Any delay in determining whether or not a payee is entitled to an interest in proceeds shall not affect payments to all other payees so entitled.

(4) If a payer does not make payment within the time frames specified in subsection (2) of this section and such delay in payment was not caused by any of the reasons specified in subsection (3) of this section, the payer shall pay such payee simple interest on the amount of the proceeds withheld, which interest shall be calculated from the date of each sale at a rate equal to two times the discount rate at the federal reserve bank of Kansas City as such rate existed on the first day of the calendar year or years in which proceeds were withheld.

(5) Absent a bona fide dispute over the interpretation of a contract for payment, the oil and gas conservation commission shall have jurisdiction to determine the following:

(a) The date on which payment of proceeds is due a payee under subsection (2) of this section;

(b) The existence or nonexistence of an occurrence pursuant to subsection (3) of this section which would justifiably cause a delay in payment; and

(c) The amount of the proceeds plus interest, if any, due a payee by a payer.

(5.5) Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the oil and gas conservation commission shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the commission finds that such a dispute exists, the commission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court.

(6) The commission may assign to the parties the costs of any administrative proceeding pursuant to this section in such proportions as it deems appropriate and may award reasonable attorney fees and costs to the prevailing party. The moneys received by the commission to cover the costs of such administrative proceedings shall be transmitted to the state treasurer, who shall credit such moneys to the oil and gas conservation and environmental response fund created in section 34-60-122.

(7) As a prerequisite to seeking relief under this section for the failure of a payer to make timely payment, a payee shall give the payer written notice by certified mail of such failure and the payer shall have twenty days after receipt of the required notice in which to pay the proceeds, plus any interest due thereon, in accordance with the provisions of this section or to respond in writing explaining the reason for nonpayment.

(8) (a) Nothing in this section shall be construed to alter existing substantive rights or obligations nor to impose upon the oil and gas conservation commission any duty to interpret a contract from which the obligation to pay proceeds arises.

(b) Subsections (2.3), (2.5), and (2.7) of this section shall apply to payments of proceeds derived from sales occurring on or after July 1, 1998.

Source: L. 89: Entire section added, p. 1374, § 1, effective July 1, 1990. L. 98: (2) and IP(5) amended and (2.3), (2.5), (2.7), (5.5), and (8) added, p. 636, § 1, effective July 1. L. 2005: (6) amended, p. 733, § 4, effective July 1. L. 2007: (2.5) amended, p. 1344, § 2, effective May 29.

ANNOTATION

The general assembly intended to grant the commission jurisdiction only over disputes over the timeliness of payments, not whether payments are due at all. *Grynberg v. Colo. Oil*

and Gas Comm'n, 7 P.3d 1060 (Colo. App. 1999); *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138 (10th Cir. 2000).

34-60-119. Production - limitation. This article shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, or judgment that prorates production by requiring restriction of production of any pool or of any well, except a well or wells drilled in violation of section 34-60-116, to an amount less than the well or pool can produce without waste.

Source: L. 51: p. 661, § 14. CSA: C. 118, § 68(14). CRS 53: § 100-6-18. L. 55: p. 658, 11. C.R.S. 1963: § 100-6-18. L. 2007: Entire section amended, p. 1360, § 7, effective May 29.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 320, Session Laws of Colorado 2007.

34-60-120. Application of article. (1) This article shall apply to all lands within the state of Colorado, except as follows:

(a) As to lands of the United States or lands which are subject to its supervision, this article shall apply only to the extent necessary to permit the commission to protect the correlative rights of each owner and producer within a pool and to carry out the provisions of sections 34-60-106, 34-60-117 (4), 34-60-118, and 34-60-122; but the other provisions of this article shall also apply to such lands only if the officer of the United States having jurisdiction approves the order of the commission which purports to affect such lands.

(b) This article shall not in any case apply to any lands committed to any unit or cooperative agreement approved by the department of interior, except as provided in sections 34-60-106, 34-60-117 (4), and 34-60-118, and except as to privately owned or state lands; except that section 34-60-122 shall apply to all lands and to all production from all lands within the state of Colorado.

Source: L. 51: p. 661, § 13. CSA: C. 118, § 68(13). L. 52: p. 132, § 2. CRS 53: § 100-6-17. L. 55: p. 656, § 9. C.R.S. 1963: § 100-6-17. L. 71: p. 1050, § 1.

ANNOTATION

Law reviews. For article, "Oil and Gas Leasing on Federal Lands: Application of State and Local Laws", see 12 Colo. Law. 1458 (1983).

34-60-121. Violations - penalties. (1) Any operator who violates any provision of this article, any rule or order of the commission, or any permit shall be subject to a penalty

of not more than one thousand dollars for each act of violation per day that such violation continues. Any such penalty shall be imposed by order of the commission, after a hearing in accordance with section 34-60-108, or by an administrative order by consent entered into by the commission and an operator. For a violation that does not result in significant waste of oil and gas resources or damage to correlative rights or does not result in a significant adverse impact on public health, safety, or welfare, the maximum penalty shall not exceed ten thousand dollars. The commission shall promulgate rules that establish a penalty schedule appropriate to the nature of the violation and that provide for the consideration of any aggravating or mitigating circumstances. An operator subject to a penalty order shall pay the amount due within thirty days after its imposition, unless such operator files a judicial appeal. The penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the commission in the second judicial district. Moneys collected through the imposition of penalties shall be credited first to any legal costs and attorney fees incurred by the attorney general in such a recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund, created in section 34-60-122.

(2) If any person, for the purpose of evading this article or any rule, regulation, or order of the commission, makes or causes to be made any false entry or statement in a report required by this article or by any such rule, regulation, or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this article or by any such rule, regulation, or order, or omits or causes to be omitted from any such record, account, or memorandum full, true, and correct entries as required by this article or by any such rule, regulation, or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of this article or any rule, regulation, or order of the commission shall be subject to the same penalty as that prescribed by this article for the violation by such other person.

(4) Whenever the commission or the director has reasonable cause to believe a violation of any provision of this article, any rule, regulation, or order of the commission, or any permit has occurred, written notice shall be given to the operator whose act or omission allegedly resulted in such violation. The notice shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, and any corrective action and abatement deadlines the commission or director elects to require of the operator.

(5) (a) If an operator fails to take corrective action required pursuant to subsection (4) of this section, or whenever the commission or the director has evidence that a violation of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit has occurred, under circumstances deemed to constitute an emergency situation, the commission or the director may issue a cease-and-desist order to the operator whose act or omission allegedly resulted in such violation. Such cease-and-desist order shall require such action by the operator as the commission or director deems appropriate. The order shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the commission or the director elects to require of the operator.

(b) The commission or the director may require an operator to appear for a hearing before the commission no sooner than fifteen days after the issuance of a cease-and-desist order; except that the operator may request an earlier hearing. At any hearing concerning a cease-and-desist order, the commission shall permit all interested parties and any complaining parties to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts.

(c) In the event an operator fails to comply with a cease-and-desist order, the commission may request the attorney general to bring suit pursuant to section 34-60-109.

(6) If the commission determines, after a hearing conducted in accordance with section 34-60-108, that an operator has failed to perform any corrective action imposed under subsection (4) of this section or failed to comply with a cease-and-desist order issued under subsection (5) of this section with regard to a violation of a permit provision, the commission may issue an order suspending, modifying, or revoking such permit or may take other appropriate action. An operator subject to an order that suspends, modifies, or revokes a permit shall continue the affected operations only for the purpose of bringing them into compliance with the permit or modified permit and shall do so under the supervision of the commission. Once the affected operations are in compliance to the satisfaction of the commission and any penalty not subject to judicial review or appeal has been paid, the commission shall reinstate the permit.

(7) Whenever the commission or the director has evidence that an operator is responsible for a pattern of violation of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit, the commission or the director shall issue an order to such operator to appear for a hearing before the commission in accordance with section 34-60-108. If the commission finds, after such hearing, that a knowing and willful pattern of violation exists, it may issue an order which shall prohibit the issuance of any new permits to such operator. When such operator demonstrates to the satisfaction of the commission that it has brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, such order denying new permits shall be vacated.

Source: L. 55: p. 656, § 10. CRS 53: § 100-6-21. C.R.S. 1963: § 100-6-21. L. 94: (1) amended and (4) to (7) added, p. 1982, § 9, effective June 2. L. 2005: (1) amended, p. 734, § 5, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1) and enacting subsections (4) to (7), see section 1 of chapter 317, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Conservation of Oil Resources — Colorado's Position Today", see 22 Rocky Mt. L. Rev. 489 (1950).

34-60-122. Expenses - fund created. (1) (a) In addition to the filing and service fee required to be paid under section 34-60-106 (1) (f) and the fees authorized for other services provided by the commission by section 34-60-106 (16), there is imposed on the market value at the well of all oil and natural gas produced, saved, and sold or transported from the field where produced in this state a charge not to exceed one and seven-tenths mills on the dollar. The commission shall, by order, fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation and environmental response fund specified in subsection (5) of this section may require.

(b) On and after July 1, 2007, the commission shall ensure that the two-year average of the unobligated portion of the fund does not exceed four million dollars and that there is an adequate balance in the environmental response account created pursuant to subsection (5) of this section to address environmental response needs.

(2) (a) On or before March 1, June 1, September 1, and December 1 of each year, every producer or purchaser, whichever disburses funds directly to each and every person owning a working interest, a royalty interest, an overriding royalty interest, a production payment and other similar interests from the sale of oil or natural gas subject to the charge imposed by subsection (1) of this section, shall file a return with the commission showing the volume of oil, gas, or condensate produced or purchased during the preceding calendar quarter, and the actual sales value of such oil, gas, or condensate, including the total consideration due

or received at the point of delivery. Such return shall be accompanied by the total amount of the charges due on all interests in the oil or gas except those interests exempted under the provisions of subsection (4) of this section.

(b) Each producer shall advise the commission whether he or the purchaser will be responsible for reporting and remitting the levy under the provisions of paragraph (a) of this subsection (2). If the return is filed by the producer, the producer shall maintain at his place of business for three years the invoice or statement issued by each purchaser showing the amount of oil or gas purchased, the producing lease from which such purchase was made, and the total sales price paid. Such purchaser invoice or statement may be requested periodically by the commission with the quarterly report.

(3) Any producer or purchaser who files a return pursuant to subsection (2) of this section shall pay any such charge or any interest other than his own, and such producer or purchaser is authorized to deduct the amount of such payment from any amount owed by him to the person for whom such charge was paid. Any such charge not paid when required by subsection (2) of this section shall bear interest at the rate of three percent per month, from the date of delinquency until paid.

(4) The charge imposed by subsection (1) of this section shall not apply to the interest in any oil or gas or the proceeds therefrom of the following:

- (a) The United States;
- (b) The state of Colorado or any of its political subdivisions;
- (c) Any Indian or Indian tribe on production from land subject to the supervision of the United States.

(5) It is the duty of the oil and gas conservation commission to collect all charges and penalties under this article and to remit them to the state treasurer for deposit in the oil and gas conservation and environmental response fund, which fund is hereby created in the state treasury. There is hereby created in the fund the environmental response account, into which shall be deposited penalties pursuant to section 34-60-121 (1). Expenditures authorized pursuant to section 34-60-124 (4) shall be paid in the first instance from the account, and expenditures authorized pursuant to section 34-60-124 (10) shall not be paid from the account. The general assembly shall annually make appropriations for the purposes authorized by section 34-60-124, and warrants shall be drawn against the appropriations as provided by law.

Source: L. 51: p. 662, § 18. CSA: C. 118, § 68(16). L. 53: p. 444, § 3. CRS 53: § 100-6-20. L. 59: p. 606, § 1. C.R.S. 1963: § 100-6-20. L. 65: p. 900, § 1. L. 71: p. 1051, § 1. L. 77: (1) and (5) amended, p. 1570, § 2, effective June 1; (2) and (3) amended, p. 1769, § 9, effective January 1, 1978. L. 78: (5) amended, p. 273, § 96, effective May 23. L. 84: (2) R&RE and (3) and (5) amended, pp. 936, 937, §§ 1, 2, effective April 27. L. 86: (1) and (5) amended, p. 1073, § 2, effective April 3. L. 87: (1) amended, p. 1274, § 1, effective May 8. L. 88: (5) amended, p. 1217, § 1, effective April 14. L. 90: (1) R&RE, p. 1545, § 2, effective May 8. L. 91: (2)(a) and (5) amended, pp. 1415, 1416, §§ 4, 5, effective April 19. L. 94: (1)(b) and (2)(a) amended, p. 1984, § 10, effective June 2. L. 2005: (1)(a), (1)(b), and (5) amended, p. 731, § 1, effective July 1; (1)(b) amended, p. 542, § 3, effective July 1. L. 2006: (1)(b) amended, p. 220, § 1, effective March 31.

Editor's note: Amendments to subsection (1)(b) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

Cross references: (1) For disposition of moneys collected by state agencies or instrumentalities, see § 24-36-103.

(2) For the legislative declaration contained in the 1994 act amending subsections (1)(b) and (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-123. Interstate compact to conserve oil and gas. The governor may execute agreements with other member states for expiration date extensions or other modifications

of the terms of the interstate compact to conserve oil and gas. The governor may further take all steps necessary to effect withdrawal of this state from the compact upon his determination that withdrawal is in the best interests of the state of Colorado.

Source: L. 73: p. 1411, § 73. C.R.S. 1963: § 100-6-23.

34-60-124. Oil and gas conservation and environmental response fund. (1) The following moneys shall be credited to the oil and gas conservation and environmental response fund:

(a) The revenues from the surcharge imposed by the commission pursuant to section 34-60-122 (1) (a);

(b) Moneys reimbursed to or recovered by the commission in payment for fund expenditures;

(c) Any moneys appropriated to such fund by the general assembly;

(d) Any moneys granted to the commission from any federal agency for the purposes outlined under subsection (4) of this section;

(e) Prepayments by operators, in situations where a responsible party cannot be identified, as a credit against the surcharge imposed by section 34-60-122 (1) (a), whether in cash or through the provision of services or equipment, in order that the commission may conduct the activities provided for in subsection (4) of this section;

(f) Moneys recovered from the sale of salvaged equipment, as provided for in paragraph (c) of subsection (6) of this section.

(2) The moneys in the oil and gas conservation and environmental response fund shall not revert to the general fund at the end of any fiscal year.

(3) The moneys in the oil and gas conservation and environmental response fund shall be subject to annual appropriation by the general assembly; except that moneys deposited in the fund constituting forfeited security or other financial assurance provided by operators in accordance with section 34-60-106 (3.5) and (13) shall be continuously appropriated to the commission for the purpose of fulfilling obligations under this article upon which an operator has defaulted.

(4) The oil and gas conservation and environmental response fund may be expended:

(a) By the commission, or by the director at the commission's direction, prior to, during, or after the conduct of oil and gas operations to:

(I) Investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, a significant adverse environmental impact on any air, water, soil, or biological resource;

(II) Gather background or baseline data on any air, water, soil, or biological resource that the commission determines may be so impacted by the conduct of oil and gas operations; and

(III) Investigate alleged violations of any provision of this article, any rule or order of the commission, or any permit where the alleged violation threatens to cause or actually causes a significant adverse environmental impact;

(b) For purposes authorized by section 23-41-114 (4), C.R.S.;

(c) Repealed.

(5) The director of the oil and gas conservation commission shall prepare an annual report for the executive director of the department of natural resources and the governor regarding the operations of and disbursements from the fund.

(6) For the purposes provided for in subsection (4) of this section, the commission is authorized to:

(a) Enter onto any lands or waters, public or private; and, except in emergency situations, the commission shall provide reasonable notice prior to such entry in order to allow a surface owner, local government designee, operator, or responsible party to be present and to obtain duplicate samples and copies of analytical reports;

(b) Require responsible parties to conduct investigation or monitoring activities and to provide the commission with the results;

(c) Confiscate and sell for salvage any equipment abandoned by a responsible party at a location where the conduct of oil and gas operations has resulted in a significant adverse

environmental impact; except that this authority shall be subject to and secondary to any valid liens, security interests, or other legal interests in such equipment asserted by any taxing authority or by any creditor of the responsible party.

(7) If the commission determines that mitigation of a significant adverse environmental impact on any air, water, soil, or biological resource is necessary as a result of the conduct of oil and gas operations, the commission shall issue an order requiring the responsible party to perform such mitigation. If the responsible party cannot be identified or refuses to comply with such order, the commission shall authorize the necessary expenditures from the fund. The commission shall bring suit in the second judicial district to recover such expenditures from any responsible party who refuses to perform such mitigation or any responsible party who is subsequently identified, such action to be brought within a two-year period from the date that final expenditures were authorized. Moneys recovered as a result of such suit shall first be applied to the commission's legal costs and attorney fees and shall then be credited to the fund.

(8) (a) For purposes of this section, "responsible party" means any person who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision of this article, or of any rule, regulation, or order of the commission, or of any permit that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource. "Responsible party" includes any person who disposes of any other waste by mixing it with exploration and production waste that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource.

(b) Except as otherwise provided in paragraph (a) of this subsection (8), "responsible party" does not include any landowner, whether of the surface estate, mineral estate, or both, who does not engage in, or assume responsibility for, the conduct of oil and gas operations.

(9) For purposes of this section, any person who is found to be a responsible party shall be deemed to have consented to the jurisdiction of the commission and the courts of the state of Colorado. Each responsible party shall be liable only for a proportionate share of any costs imposed under this section and shall not be held jointly and severally liable for such costs.

(10) The fund shall be expended by the commission or by the director for the purposes of administering the provisions of this article, including staffing, overhead, enforcement, and the payment of environmental responses costs, and for paying expenses in connection with the interstate oil and gas compact commission.

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (4) amended, p. 1416, § 6, effective April 19. **L. 94:** Entire section amended, p. 1985, § 11, effective June 2. **L. 2000:** (3) amended, p. 826, § 1, effective May 24. **L. 2002:** (5) amended, p. 878, § 8, effective August 7. **L. 2005:** IP(1), (1)(a), (1)(e), (2), (3), and (4) amended and (10) added, p. 732, § 2, effective July 1; (4) amended, p. 541, § 2, effective July 1. **L. 2007:** IP(4) amended and (4)(c) added, p. 1587, § 2, effective May 31. **L. 2011:** (4)(c) repealed, (HB 11-1303), ch. 264, p. 1173, § 86, effective August 10.

Editor's note: Amendments to subsection (4) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-125. Mitigation of adverse environmental impacts. (Repealed)

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (1) amended, p. 1416, § 7, effective April 19. **L. 94:** Entire section repealed, p. 1987, § 12, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-126. Credit allowed for prior payment for mitigation of environmental impacts. (Repealed)

Source: **L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (2) and (3) amended, p. 1417, § 8, effective April 19. **L. 94:** Entire section repealed, p. 1989, § 13, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

34-60-127. Reasonable accommodation. (1) (a) An operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land.

(b) As used in this section, “minimizing intrusion upon and damage to the surface” means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator.

(c) The standard of conduct set forth in this section shall not be construed to prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas.

(d) The standard of conduct set forth in this section shall not be construed to abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface.

(2) An operator’s failure to meet the requirements set forth in this section shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages or such equitable relief as is consistent with subsection (1) of this section.

(3) (a) In any litigation or arbitration based upon this section, the surface owner shall present evidence that the operator’s use of the surface materially interfered with the surface owner’s use of the surface of the land. After such showing, the operator shall bear the burden of proof of showing that it met the standard set out in subsection (1) of this section. If an operator makes that showing, the surface owner may present rebuttal evidence.

(b) An operator may assert, as an affirmative defense, that it has conducted oil and gas operations in accordance with a regulatory requirement, contractual obligation, or land use plan provision, that is specifically applicable to the alleged intrusion or damage.

(4) Nothing in this section shall:

(a) Preclude or impair any person from obtaining any and all other remedies allowed by law;

(b) Prevent an operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract; or

(c) Establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.

Source: **L. 2007:** Entire section added, p. 1335, § 2, effective September 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 314, Session Laws of Colorado 2007.

34-60-128. Habitat stewardship - rules. (1) This section shall be known and may be cited as the “Colorado Habitat Stewardship Act of 2007”.

(2) The commission shall administer this article so as to minimize adverse impacts to wildlife resources affected by oil and gas operations.

(3) In order to minimize adverse impacts to wildlife resources, the commission shall:

(a) Establish a timely and efficient procedure for consultation with the parks and wildlife commission and division of parks and wildlife on decision-making that impacts wildlife resources;

(b) Provide for commission consultation and consent of the affected surface owner, or the surface owner's appointed tenant, on permit-specific conditions for wildlife habitat protection. Such conditions shall be discontinued when final reclamation has occurred.

(c) Implement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources;

(d) Promulgate rules, by July 16, 2008, in consultation with the parks and wildlife commission, to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations. At a minimum, the rules shall address:

(I) Developing a timely and efficient consultation process with the division of parks and wildlife governing notification and consultation on minimizing adverse impacts, and other issues relating to wildlife resources;

(II) Encouraging operators to utilize comprehensive drilling plans and geographic area analysis strategies to provide for orderly development of oil and gas fields;

(III) Minimizing surface disturbance and fragmentation in important wildlife habitat by incorporating appropriate best management practices:

(A) In orders or rules establishing drilling units or allowing the drilling of additional wells in drilling units pursuant to section 34-60-116;

(B) In orders approving agreements for development or unit operations pursuant to section 34-60-118; and

(C) On a site-specific basis, as conditions of approval to a permit to drill pursuant to section 34-60-106 (1) (f).

(4) Nothing in this section shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.

Source: L. 2007: Entire section added, p. 1329, § 3, effective July 1. L. 2008: IP(3)(d) amended, p. 1034, § 2, effective May 21. L. 2012: (3)(a) and IP(3)(d) amended, (HB 12-1317), ch. 248, p. 1235, § 91, effective June 4.

34-60-129. Coalbed methane seepage - fund created - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 1586, § 1, effective May 31.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 1586.)

ARTICLE 61

Oil Wells and Boreholes

34-61-101.	Boreholes penetrating coal seams.	34-61-105.	seams. Casing to exclude water.
34-61-102.	Location of borehole restricted.	34-61-106.	Application of article.
34-61-103.	Casing of borehole penetrating coal.	34-61-107.	Enforcement of law.
34-61-104.	Oil or gas entering coal	34-61-108.	Violation - penalty - disposition of fines.

34-61-101. Boreholes penetrating coal seams. It is the duty of the owner, or person in charge of any borehole which penetrates any workable coal seam or any accessible or inaccessible coal mine excavation, to notify the state oil and gas conservation commission of the location of such borehole by designating the particular five-acre subdivision of the land section on which such borehole is situated, and the depth and thickness of every

workable coal seam or accessible or inaccessible coal mine excavation penetrated by such borehole. On receipt of such notification, the state oil and gas conservation commission shall at once notify the chief inspector of coal mines.

Source: L. 15: p. 373, § 28. C.L. § 3641. CSA: C. 118, § 38. CRS 53: § 100-3-1. C.R.S. 1963: § 100-3-1.

34-61-102. Location of borehole restricted. No borehole penetrating a gas-bearing or oil-bearing formation shall be located within two hundred feet of a shaft or entrance to a coal mine not definitely abandoned or sealed. No such borehole shall be located within one hundred feet of any mine shaft house, mine boiler house, mine engine house, or mine fan. The location of any proposed borehole must insure that when drilled it will be at least fifteen feet from any mine haulage or airway.

Source: L. 15: p. 375, § 32. C.L. § 3645. CSA: C. 118, § 45. CRS 53: § 100-3-2. C.R.S. 1963: § 100-3-2.

34-61-103. Casing of borehole penetrating coal. Any borehole penetrating any workable seam of coal shall be cased by the owner of such borehole with a suitable casing, conductor, or drive pipe, so as to shut off all surface water from entering said workable coal seam.

Source: L. 15: p. 375, § 33. C.L. § 3646. CSA: C. 118, § 46. CRS 53: § 100-3-3. C.R.S. 1963: § 100-3-3.

34-61-104. Oil or gas entering coal seams. When boreholes for gas or oil are drilled in the coal measures and pass through workable seams, if gas or oil is encountered in such borehole, the coal seams or worked out coal seams shall be sufficiently protected by casing so that the gas or oil shall not come in contact with the coal seams or enter the excavations of worked out seams. When no oil or gas is located and the borehole has been abandoned, a solid cement plug shall be placed extending from fifty feet below each coal seam to fifty feet above the top of each coal seam and at the surface to a depth of twenty feet.

Source: L. 15: p. 376, § 34. C.L. § 3647. CSA: C. 118, § 47. CRS 53: § 100-3-4. C.R.S. 1963: § 100-3-4. L. 77: Entire section amended, p. 1571, § 1, effective June 1.

34-61-105. Casing to exclude water. When a water-bearing formation is encountered in the drilling of any borehole for natural gas or oil, casing shall be set upon the next formation encountered which is of such a nature that it will sustain the casing and exclude all water from the lower borehole.

Source: L. 15: p. 376, § 35. C.L. § 3648. CSA: C. 118, § 48. CRS 53: § 100-3-5. C.R.S. 1963: § 100-3-5.

34-61-106. Application of article. This article shall apply only to wells or boreholes which may be drilled through workable coal seams.

Source: L. 15: p. 376, § 38. C.L. § 3651. CSA: C. 118, § 51. CRS 53: § 100-3-6. C.R.S. 1963: § 100-3-6.

34-61-107. Enforcement of law. It is the duty of the district attorneys in their districts, and the attorney general in cases where the district attorney refuses to act, to enforce the provisions of this article by appropriate actions in courts of competent jurisdiction.

Source: L. 55: p. 646, § 1. CRS 53: § 100-3-7. C.R.S. 1963: § 100-3-7.

34-61-108. Violation - penalty - disposition of fines. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months in the county jail, or by both such fine and imprisonment. In all cases where fines are collected, one-half of the amount shall be paid to the treasury department and be placed to the credit of the general fund.

Source: L. 55: p. 646, § 1. CRS 53: § 100-3-8. C.R.S. 1963: § 100-3-8.

ARTICLE 62

Inspection of Oil Wells

34-62-101 to 34-62-110. (Repealed)

Source: L. 85: Entire article repealed, p. 1129, § 2, effective July 1.

Editor's note: This article was numbered as article 7 of chapter 100, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 63

Royalties Under Federal Leasing

34-63-101.	State treasurer to receive and distribute mineral leasing payments.	34-63-103.	created - definitions - repeal.
34-63-102.	Creation of mineral leasing fund - distribution - advisory committee - local government permanent fund	34-63-104.	Method of payment.
		34-63-105.	Special funds relating to oil shale lands.
			Geothermal resource leasing fund.

34-63-101. State treasurer to receive and distribute mineral leasing payments. In accordance with the provisions of section 35 of the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, the state treasurer is directed to deposit and distribute any moneys now held or to be received by the state of Colorado from the United States as the state's share of sales, bonuses, royalties, and rentals of public lands within this state, for the benefit of the public schools and political subdivisions of this state and for other purposes in accordance with the provisions of sections 34-63-102 and 34-63-103.

Source: L. 53: Ex. Sess., p. 23, § 1. CRS 53: § 100-8-1. C.R.S. 1963: § 100-8-1. L. 77: Entire section R&RE, p. 1572, § 1, effective June 19.

Cross references: For the "Mineral Lands Leasing Act" of February 25, 1920, see 30 U.S.C. 181 et seq.

34-63-102. Creation of mineral leasing fund - distribution - advisory committee - local government permanent fund created - definitions - repeal.

(1) (a) (I) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(II) On and after July 1, 2008, all moneys, including any interest and income derived therefrom, received by the state treasurer pursuant to the provisions of the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, except those moneys described in section 34-63-104, shall be deposited by the state treasurer into the mineral leasing fund for use by state agencies, public schools, and political subdivisions of the state as described in

subsections (5.3) and (5.4) of this section and for transfer to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1) (a), C.R.S., the higher education maintenance and reserve fund created in section 23-19.9-102 (2) (a), C.R.S., and the local government permanent fund created in sub-subparagraph (A) of subparagraph (I) of paragraph (a) of subsection (5.3) of this section, as required by this section and section 23-19.9-102, C.R.S.

(b) In the appropriation and use of such moneys, priority shall be given to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under said federal mineral lands leasing act.

(2) to (4) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(5) (a) (I) On and after July 1, 2008, moneys shall be paid into the local government mineral impact fund, which is hereby created, as specified in paragraph (b) of subsection (5.4) of this section and distributed as specified in paragraphs (b) and (c) of said subsection.

(II) On and after July 1, 2001, all income derived from the deposit and investment of the moneys in the local government mineral impact fund shall be credited to the fund.

(III) to (V) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(b) (I) There is hereby created within the department of local affairs an energy impact assistance advisory committee. The committee shall be composed of the executive director of the department of local affairs, the executive director of the department of natural resources, the commissioner of education, the executive director of the department of public health and environment, the executive director of the department of transportation, and seven residents of areas impacted by energy conversion or mineral resource development. The seven residents shall be appointed by the governor, with the consent of the senate, for terms not exceeding four years to serve at the pleasure of the governor. The executive director of the department of local affairs shall act as chairperson of the committee. Members of the committee shall serve without additional compensation; except that the seven members appointed from energy impact areas shall be entitled to reimbursement for actual and necessary expenses. Any member of the committee who is a state official may designate representatives of his or her agency to serve on the committee in his or her absence. The chairperson shall convene the advisory committee from time to time as he or she deems necessary. The advisory committee shall continuously review the existing and potential impact of the development, processing, or energy conversion of mineral and fuel resources on various areas of the state, including those areas indirectly affected, and shall make continuing recommendations to the department of local affairs, including, but not limited to, those actions deemed reasonably necessary and practicable to assist impacted areas with the problems occasioned by such development, processing, or energy conversion, the immediate and projected problems which the local governments are experiencing in providing governmental services, the extent of local tax resources available to each unit of local government, the extent of local tax effort in solving energy impacted problems, and other problems which the areas have experienced, such as housing and environmental considerations, which have developed as a direct result of energy impact. In furtherance thereof, the committee shall make continuing specific recommendations regarding any discretionary distributions by the executive director of the department of local affairs authorized pursuant to this section and section 39-29-110, C.R.S. With respect to recommendations for the distribution of moneys made pursuant to this section, the committee shall give priority and preference to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended. With respect to recommendations for the distribution of moneys made pursuant to section 39-29-110, C.R.S., the committee shall recommend distributions to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under article 29 of title 39, C.R.S.

(II) Repealed.

(c) The executive director of the department of local affairs shall deliver to the state auditor and file with the general assembly annually before February 1 a detailed report accounting for the distribution of all funds for the previous year. The energy impact assistance advisory committee shall review the report prior to it being delivered and filed.

(5.3) (a) Bonus payments credited to the mineral leasing fund created in subparagraph (I) of paragraph (a) of subsection (1) of this section shall be distributed on a quarterly basis for each quarter commencing on July 1, October 1, January 1, or April 1 of any state fiscal year as follows:

(I) (A) Fifty percent of the bonus payments shall be transferred to the local government permanent fund, which is hereby created in the state treasury. Interest and income derived from the deposit and investment of moneys in the local government permanent fund shall be credited to the permanent fund and shall not be transferred to the general fund or any other fund at the end of any fiscal year. Except as otherwise provided in sub-subparagraphs (B), (C), and (D) of this subparagraph (I), moneys in the permanent fund shall not be expended for any purpose. The state treasurer may invest moneys in the local government permanent fund in any investment in which the board of trustees of the public employees' retirement association may invest the funds of the association pursuant to section 24-51-206, C.R.S.

(B) Except as provided in sub-subparagraph (C) of this subparagraph (I), if, based on the revenue estimate prepared by the staff of the legislative council in March of any fiscal year, it is anticipated that the total amount of moneys that will be deposited into the mineral leasing fund pursuant to subparagraph (II) of paragraph (a) of subsection (1) of this section during the fiscal year will be at least ten percent less than the amount of moneys so deposited during the immediately preceding fiscal year, the general assembly may appropriate moneys from the local government permanent fund to the department of local affairs for the current fiscal year. The maximum amount that the general assembly may appropriate for the current fiscal year pursuant to this sub-subparagraph (B) is an amount equal to the difference between the total amount of moneys credited to the local government mineral impact fund and directly distributed by the executive director of the department pursuant to paragraph (c) of subsection (5.4) of this section during the immediately preceding fiscal year and the estimated total amount of moneys to be so credited and distributed for the current fiscal year. The executive director of the department shall distribute all moneys appropriated pursuant to this sub-subparagraph (B) directly to counties and municipalities in combination with and using the methodology set forth in subparagraphs (I) to (IV) of paragraph (c) of subsection (5.4) of this section.

(C) and (D) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(E) Notwithstanding any provision of this subsection (5.3) to the contrary, on June 30, 2011, the state treasurer shall deduct four million eight hundred thousand dollars from the local government permanent fund and transfer such sum to the general fund.

(II) Fifty percent of the bonus payments shall be transferred to the higher education maintenance and reserve fund created in section 23-19.9-102 (2) (a), C.R.S.

(b) For purposes of this subsection (5.3), "bonus payments" means the portion of the compensation paid to the federal government as consideration for the granting of a federal mineral lease that is payable regardless of the extent of use of the mineral interest and is fixed and certain in amount, whether or not payable in one or more periodic increments over a fixed period, that is subsequently received by the state treasurer pursuant to the provisions of the federal "Mineral Lands Leasing Act" of February 20, 1920, as amended, and that is not comprised of moneys described in section 34-63-104. "Bonus payments" do not include any compensation paid to the federal government that varies in amount based on the amount of mineral production of the payer.

(5.4) Except as otherwise provided in subsection (5.5) of this section, on and after July 1, 2008, all moneys other than bonus payments, as defined in paragraph (b) of subsection (5.3) of this section, credited to the mineral leasing fund created in subparagraph (I) of paragraph (a) of subsection (1) of this section shall be distributed on a quarterly basis for quarters beginning on July 1, October 1, January 1, and April 1 of each state fiscal year as follows:

(a) (I) For each quarter commencing during the 2008-09, 2009-10, and 2010-11 fiscal years, forty-eight and three-tenths percent of the moneys shall be transferred to the state public school fund to be used for the support of the public schools of the state; except that the total amount of moneys transferred during each of said fiscal years shall not exceed sixty-five million dollars.

(II) For each quarter commencing during the 2011-12 fiscal year or during any succeeding fiscal year, forty-eight and three-tenths percent of the moneys shall be paid into the state public school fund to be used for the support of the public schools of the state; except that the maximum amount of moneys transferred during any fiscal year shall not exceed the maximum amount of moneys allowed to be transferred during the 2010-11 fiscal year multiplied by one hundred four percent per year for each succeeding fiscal year.

(b) (I) For each quarter commencing during the 2008-09 fiscal year or during any succeeding fiscal year, forty percent of the moneys shall be credited to the local government mineral impact fund. Fifty percent of the moneys so credited shall be distributed by the executive director of the department of local affairs in accordance with the purposes and priorities described in subsection (1) of this section, and in distributing the moneys the executive director shall give priority to those communities most directly and substantially impacted by production of energy resources on federal mineral lands and to grant applications that:

(A) Are submitted jointly by multiple local governments; or

(B) Seek funding for a project that is a multi-jurisdictional project or that requires a substantial amount of funding.

(II) Notwithstanding any other provision of this section, in the fiscal years commencing July 1, 2012, and July 1, 2013, unless another source of funding becomes available, the executive director of the department of local affairs shall transfer, prior to any other distribution specified in this paragraph (b), three million two hundred fifty thousand dollars of the moneys available for grant applications pursuant to this paragraph (b) to the state treasurer, who shall credit the moneys to the wildfire preparedness fund created in section 23-31-309 (4), C.R.S. The Colorado state forest service designated in section 23-31-302, C.R.S., shall annually report on the use of the moneys transferred pursuant to this subparagraph (II) to the department of local affairs, the office of state planning and budgeting, and the general assembly. This subparagraph (II) is repealed, effective July 1, 2016.

(b.5) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(b.7) Notwithstanding any provision of paragraph (b) of this subsection (5.4) to the contrary, on June 30, 2011, the state treasurer shall deduct fifteen million dollars from the local government mineral impact fund and transfer such sum to the general fund.

(b.8) Notwithstanding any provision of paragraph (b) of this subsection (5.4) to the contrary, on June 30, 2012, the state treasurer shall deduct thirty million dollars from the local government mineral impact fund and transfer such sum to the general fund.

(c) The executive director of the department of local affairs shall annually directly distribute the remaining fifty percent of the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4) and any moneys appropriated by the general assembly from the local government permanent fund to the department pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (5.3) of this section to counties, federal mineral lease districts, and municipalities as follows:

(I) Except as otherwise provided in subparagraph (III) of this paragraph (c), moneys shall be allocated to counties for each fiscal year by August 31 of the following fiscal year among those respective counties of the state from which the moneys are derived based upon the following factors:

(A) The proportion of the total amount of moneys credited to the mineral leasing fund that is derived from each of the respective counties; and

(B) On the basis of the report required by section 39-29-110 (1) (d), C.R.S., the proportion of employees of mines or related facilities or crude oil, natural gas, or oil and gas

operations who reside in a county to the total number of employees of mines and related facilities or crude oil, natural gas, or oil and gas operations who reside in the state.

(II) Except as otherwise specified in subparagraph (IV) of this paragraph (c), the moneys allocated to each county pursuant to subparagraph (I) of this paragraph (c) shall be further distributed to the county or the federal mineral lease district and to each municipality within the county based upon the following factors:

(A) The proportion of employees reported as residents pursuant to section 39-29-110 (1) (d), C.R.S., in the county's unincorporated area or in any municipality within the county to the total number of employees reported as residents in the county as a whole pursuant to said section;

(B) The proportion of the population in any such county's unincorporated area or in any such municipality within the county to the total population in the county, as such population is reported in the most recently published population estimate from the state demographer appointed by the executive director of the department of local affairs; and

(C) The proportion of road miles in any such county's unincorporated area or in any such municipality within the county to the total road miles in the county, as such miles are certified by the department of transportation to the state treasurer pursuant to sections 43-4-207 (2) (d) and 43-4-208 (3), C.R.S.

(III) With respect to the distribution made pursuant to subparagraph (I) of this paragraph (c), the executive director of the department of local affairs shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (c) shall be given, subject to the limitation that the factor described in said sub-subparagraph (B) shall not be weighted more than thirty-five percent. In establishing the guidelines, the executive director shall weigh the factors in a manner that most accurately estimates the absolute and relative impacts of production of energy resources on federal mineral lands for each impacted county so that the counties most substantially and directly impacted by such production each receive a sufficient allocation and no county receives an excessive allocation.

(IV) With respect to the distribution made pursuant to subparagraph (II) of this paragraph (c), the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (II) of this paragraph (c) shall be given. In establishing the guidelines, the executive director and the committee shall weigh the factors in a manner that most accurately estimates the absolute and relative impacts of production of energy resources on federal mineral lands for each impacted county and municipality so that the counties and municipalities most substantially and directly impacted by such production each receive a sufficient allocation and no county or municipality receives an excessive allocation. These guidelines shall apply uniformly across the state; except that the executive director may:

(A) Accept a memorandum of understanding from a county and all municipalities contained therein that establishes an alternative distribution that shall be effective within the county; and

(B) After consultation with the energy impact assistance advisory committee, vary the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (II) of this paragraph (c) receives in an individual county in order to more fairly distribute the gross receipts among the county and all municipalities contained therein.

(d) (I) For each quarter commencing during the 2008-09 fiscal year, ten percent of the moneys shall be paid into the Colorado water conservation board construction fund created in section 37-60-121 (1), C.R.S., for appropriation by the general assembly pursuant to the provisions of section 37-60-122, C.R.S., and for use in accordance with the purposes and priorities described in subsection (1) of this section; except that the maximum amount of moneys transferred during the 2008-09 fiscal year shall not exceed fourteen million dollars.

(II) For each quarter commencing during the 2009-10 fiscal year or during any succeeding fiscal year, an amount equal to ten percent of the moneys shall be paid into the Colorado water conservation board construction fund created in section 37-60-121 (1), C.R.S., for appropriation by the general assembly pursuant to the provisions of section

37-60-122, C.R.S., and for use in accordance with the purposes and priorities described in subsection (1) of this section; except that the maximum amount of moneys transferred during a single fiscal year shall not exceed the maximum amount of moneys allowed to be transferred during the 2008-09 fiscal year multiplied by one hundred four percent per year for each succeeding fiscal year.

(e) (I) In addition to the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4), for the 2008-09 fiscal year, one and seven-tenths percent of the moneys shall be credited to the local government mineral impact fund and distributed to school districts within the counties that receive distributions pursuant to paragraph (c) of this subsection (5.4); except that the maximum amount of moneys credited and distributed shall not exceed three million three hundred thousand dollars. The executive director of the department of local affairs shall distribute the moneys to the school districts as specified in subparagraph (III) of this paragraph (e).

(II) In addition to the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4), for the 2009-10 fiscal year and for each succeeding fiscal year, one and seven-tenths percent of the moneys shall be credited to the local government mineral impact fund and distributed to school districts within the counties that receive distributions pursuant to paragraph (c) of this subsection (5.4); except that the maximum amount of moneys credited and distributed for a fiscal year shall not exceed the maximum amount of moneys allowed to be credited and distributed for the 2008-09 fiscal year multiplied by one hundred four percent for each succeeding fiscal year. The executive director of the department of local affairs shall distribute the moneys to the school districts as specified in subparagraph (III) of this paragraph (e).

(III) The executive director of the department of local affairs shall make the distributions required by subparagraphs (I) and (II) of this paragraph (e) at the same time as the executive director makes distributions to counties pursuant to paragraph (c) of this subsection (5.4), and the total amount of the distributions made to all school districts within a single county shall be in proportion to the amount of the moneys distributed directly to the county pursuant to said paragraph (c). Where more than one school district exists within a county, the distribution to each school district shall be the percentage that the most recent funded pupil count, as determined pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., for pupils enrolled in the county attributable to that school district bears to the most recent total funded pupil count for all pupils attributable to the county.

(5.5) (a) On and after July 1, 2008, all moneys other than bonus payments, as defined in paragraph (b) of subsection (5.3) of this section, credited to the mineral leasing fund in excess of the amounts distributed pursuant to subsection (5.4) of this section shall be transferred on a quarterly basis for each quarter commencing on July 1, October 1, January 1, or April 1 of any state fiscal year to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1) (a), C.R.S., and the higher education maintenance and reserve fund created in section 23-19.9-102 (2) (a), C.R.S., as specified in said section.

(b) Notwithstanding the provisions of paragraph (a) of subsection (5.4) of this section, if the amount of moneys in the higher education federal mineral lease revenues fund, established pursuant to section 23-19.9-102 (1), C.R.S., including any transfers pursuant to section 23-19.9-102 (2) (b), C.R.S., is insufficient to cover the full amount of the payments due to be made under lease-purchase agreements authorized pursuant to section 23-1-106.3 (3), C.R.S., the general assembly may reduce the transfer to the state public school fund by the amount needed to cover the full amount of payments and transfer that amount to the higher education federal mineral lease revenues fund.

(6) Repealed.

(7) (a) No state agency or office shall expend any moneys received from the local government mineral impact fund unless such expenditure is authorized by legislative appropriation separate from the provisions of this section; except that, if the executive director of the department of local affairs with the concurrence of the governor determines that a local government emergency exists, the state agency or office may expend any moneys received from the local government mineral impact fund without further appropriation. In the event moneys are expended based on a determination that a local govern-

ment emergency exists, the department of local affairs shall notify the legislative council of the expenditure.

(b) The provisions of paragraph (a) of this subsection (7) shall not apply to any moneys received by a state-supported institution of higher education that provides job training or facilities related to energy development for counties or communities with energy impacts. Such a state-supported institution of higher education may accept and expend moneys from the local government impact fund.

Source: **L. 53:** Ex. Sess., p. 23, § 2. **CRS 53:** § 100-8-2. **C.R.S. 1963:** § 100-8-2. **L. 77:** Entire section R&RE, p. 1572, § 2, effective June 19. **L. 79:** (2) amended, p. 1663, § 131, effective July 19. **L. 81:** (2), (3), and (5)(a) amended, p. 1692, § 1, effective June 19. **L. 82:** (3)(a) and (3)(c) amended, pp. 522, 523, §§ 1, 2, effective January 1, 1983. **L. 84:** (3)(a) amended, p. 703, § 3, effective April 5. **L. 86:** (5)(b) amended, p. 424, § 56, effective March 26. **L. 87:** (3)(b)(II) amended and (3)(b)(IV) and (6) repealed, p. 1275, §§ 1, 2, effective April 6. **L. 88:** (5)(b)(I) and (5)(b)(II)(A) amended, p. 318, § 16, effective April 14. **L. 90:** (5)(b)(II) repealed, p. 334, § 24, effective April 3. **L. 91:** (5)(b)(I) amended, p. 1073, § 55, effective July 1. **L. 93:** (5)(a) amended, p. 448, § 4, effective April 19. **L. 94:** (7) added, p. 682, § 1, effective April 19. **L. 97:** (3)(a), (3)(c), and (5)(a) amended, p. 1145, § 1, effective May 28. **L. 2000:** (5)(a) amended, p. 276, § 1, effective August 2. **L. 2002:** (2) amended, p. 1784, § 48, effective June 7. **L. 2006:** (5)(a)(I) amended, p. 984, § 3, effective May 18. **L. 2007:** (7) amended, p. 472, § 1, effective April 11; (5)(a)(I) amended, p. 549, § 5, effective August 3. **L. 2008:** (5.5) amended, p. 717, § 3, effective May 12; (5)(a)(III) added, p. 981, § 2, effective May 21; (1)(a), (2)(a), (3)(a), (3)(c)(II)(A), (4), and (5)(a)(I) amended and (5.3), (5.4), and (5.5) added, p. 2149, § 1, effective June 4; (3)(b)(I), (3)(b)(II), (5)(b)(I), and (5)(c) amended, p. 1678, § 1, effective August 5. **L. 2009:** (5)(a)(V) and (5.4)(b.5) added, (SB 09-279), ch. 367, pp. 1930, 1933, §§ 20, 27, effective June 1; (5)(a)(I) and (5.3)(a)(I) amended and (5)(a)(IV) added, (SB 09-232), ch. 435, p. 2420, § 1, effective June 4. **L. 2010:** (5.3)(a)(I)(A) amended and (5.3)(a)(I)(D) added, (HB 10-1327), ch. 135, p. 450, § 7, effective April 15. **L. 2011:** (5.3)(a)(I)(E) and (5.4)(b.7) added, (SB 11-164), ch. 33, p. 93, §§ 6, 7, effective March 18; IP(5.4)(c) and IP(5.4)(c)(II) amended, (HB 11-1218), ch. 169, p. 584, § 2, effective May 9; (5.4)(b.8) added, (SB 11-226), ch. 190, p. 734, § 5, effective May 19; (1)(a)(I), (2) to (4), (5)(a)(I), (5)(a)(III) to (5)(a)(V), (5.3)(a)(I)(C), (5.3)(a)(I)(D), (5.4)(b), and (5.4)(b.5) amended, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.

Cross references: For the “Mineral Lands Leasing Act” of February 25, 1920, see 30 U.S.C. sec. 181 et seq.

34-63-103. Method of payment. Warrants in payment of the amounts due the several counties of the state shall be issued and paid pursuant to the provisions of law.

Source: **L. 53:** Ex. Sess., p. 23, § 3. **CRS 53:** § 100-8-3. **C.R.S. 1963:** § 100-8-3.

34-63-104. Special funds relating to oil shale lands. (1) All moneys from sales, bonuses, royalties, leases, and rentals related to oil shale production on oil shale lands received by the state pursuant to section 35 of the federal “Mineral Lands Leasing Act” of February 25, 1920, as amended, shall be deposited by the state treasurer into a special fund for appropriation by the general assembly to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production and secondarily for other state purposes.

(2) All moneys earned from the investment of the oil shale special fund established by subsection (1) of this section shall be deposited by the state treasurer into a separate special fund and shall be appropriated by the general assembly primarily to state agencies, school districts, and political subdivisions of the state affected by the development and production

of energy resources from oil shale lands for planning and, in the form of grants and loans, for providing facilities and services necessitated by such development and production and secondarily for other state purposes.

Source: **L. 74:** Entire section added, p. 308, § 1, effective March 12. **L. 75:** Entire section amended, p. 1338, § 1, effective July 1. **L. 2008:** (1) amended, p. 2158, § 3, effective June 4.

Cross references: For the “Mineral Lands Leasing Act” of February 25, 1920, see 30 U.S.C. 181 et seq.

34-63-105. Geothermal resource leasing fund. (1) The state treasurer shall deposit all revenues from sales, bonuses, royalties, leases, and rentals related to geothermal resources, as that term is defined in section 37-90.5-103, C.R.S., received by the state pursuant to 30 U.S.C. sec. 1019, as amended, and all moneys earned from the investment of such revenues, into the geothermal resource leasing fund, which fund is hereby created in the state treasury, for appropriation by the general assembly to the department of local affairs for grants to state agencies, school districts, and political subdivisions of the state affected by the development and production of geothermal resources or other entities authorized by federal law:

(a) Primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production; and

(b) Secondarily to the entities listed in the introductory portion of this subsection (1) for other state purposes as specified in subsection (2) of this section.

(2) After the executive director of the department of local affairs has allocated sufficient revenues from the fund to adequately address the needs specified in paragraph (a) of subsection (1) of this section, the executive director shall, in consultation with the governor’s energy office created in section 24-38.5-101, C.R.S., allocate revenues from the fund by competitive grants for the promotion of the development of geothermal energy resources.

Source: **L. 2010:** Entire section added, (SB 10-174), ch. 189, p. 810, § 3, effective August 11.

ARTICLE 64

Underground Storage

34-64-101.	Legislative declaration.	34-64-105.	Hearing - notice - review.
34-64-102.	Definitions.	34-64-106.	Petition to district court - procedure.
34-64-103.	Condemnation - public use.		
34-64-104.	Application to commission - order.	34-64-107.	Property rights.

34-64-101. Legislative declaration. Underground storage of natural gas is found and declared to be in the public interest because it will promote the conservation of natural gas, make natural gas more readily available to the domestic, commercial, and industrial consumers of this state, and permit the building of natural gas reserves and orderly withdrawal thereof in periods of peak demand.

Source: **L. 53:** p. 440, § 2. **CRS 53:** § 100-9-2. **C.R.S. 1963:** § 100-9-2.

34-64-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Commission” means the oil and gas conservation commission of the state of Colorado.

(2) “Natural gas” means gas which has been produced from the earth in its original state or such gas after the same has been processed or treated.

(3) “Natural gas public utility” means any person, partnership, corporation, or association engaged in the business of transporting, distributing, or storing natural gas within this state for ultimate public consumption and either authorized to do business in this state as a public utility or authorized to do business in this state as a natural gas company as defined in the federal “Natural Gas Act”, and subject to regulations by the federal power commission.

(4) “Underground reservoir” means any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(5) “Underground storage” means the right to inject and store natural gas within and to withdraw natural gas from an underground reservoir.

Source: L. 53: p. 439, § 1. CRS 53: § 100-9-1. C.R.S. 1963: § 100-9-1. L. 73: p. 1072, § 1.

Cross references: For the “Natural Gas Act”, see 15 U.S.C. sec. 717 et seq.

34-64-103. Condemnation - public use. Any natural gas public utility which is engaged in the distribution, transportation, or storage of natural gas, which gas, in whole or in part, is intended for ultimate distribution to the public, has the right to enter upon, take, or use property or any interest therein which is necessary for the injection, storage, and withdrawal of natural gas in the manner provided for by this article, and by the eminent domain law of the state of Colorado, all of which property to be used is hereby recognized and declared to be devoted to public use.

Source: L. 53: p. 440, § 3. CRS 53: § 100-9-3. C.R.S. 1963: § 100-9-3.

Cross references: For eminent domain, see articles 1 to 7 of title 38.

34-64-104. Application to commission - order. Before the right of condemnation may be exercised for the acquisition of property or any interest therein for underground storage of natural gas, said natural gas public utility shall make application to the commission for an order approving the proposed storage project. No such order shall be issued by the commission unless it shall be based upon substantial evidence and shall contain findings that the underground storage of natural gas in the land sought to be condemned is in the public interest and welfare, and that the storage reservoir is suitable and practicable, and that the formation or formations sought to be condemned are nonproductive of oil or gas in commercial quantities under either primary or secondary recovery methods.

Source: L. 53: p. 440, § 4. CRS 53: § 100-9-4. C.R.S. 1963: § 100-9-4.

34-64-105. Hearing - notice - review. (1) Upon the filing of the application as specified in section 34-64-104, the commission shall set a date for hearing and give notice thereof as for proceedings in rem, in accordance with the Colorado rules of civil procedure, and shall conduct said hearing in the manner provided for in sections 34-60-108 to 34-60-110 and 34-60-114.

(2) Review of or relief from such order shall be as provided for in sections 34-60-111 to 34-60-113 and 34-60-115.

Source: L. 53: p. 440, § 5. CRS 53: § 100-9-5. C.R.S. 1963: § 100-9-5.

34-64-106. Petition to district court - procedure. Any natural gas public utility, having first obtained an order from the commission which has become final, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas, shall do so in the manner provided in this article. Such

natural gas public utility shall present to the district court of the county wherein the land or some portion thereof is situated a petition setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners of the property as shown by the records of such county. The petitioner shall file the order of the commission as a part of its petition, and no decree or rule by the court granting said petition shall be entered without such order having been filed therewith. The court shall examine said petition and determine whether the petitioner has the power of eminent domain and whether said property is necessary for its lawful purposes, and if found in the affirmative such findings shall be entered in the record. All proceedings under this section shall follow the procedure then in force and effect pertaining to eminent domain.

Source: L. 53: p. 440, § 6. CRS 53: § 100-9-6. C.R.S. 1963: § 100-9-6.

34-64-107. Property rights. All natural gas in said underground reservoir, and the rights reasonably necessary for the injection and storage in and withdrawal from said underground reservoir of said natural gas, as defined and limited by the decree of the district court, shall be the property of said natural gas public utility. In no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein or of any person other than the public utility, its successors, or its assigns, to produce, take, reduce to possession, or otherwise interfere with or exercise any control over the gas. The right of condemnation granted by this article shall be without prejudice to the rights of the owner of said land or of other rights and interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as to comply with orders, rules, and regulations of the commission issued for the purpose of protecting underground storage, strata, or formations against pollution or against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with such regulations or orders in order to protect the storage shall be paid by the public utility.

Source: L. 53: p. 441, § 7. CRS 53: § 100-9-7. C.R.S. 1963: § 100-9-7.

Geothermal Resources

ARTICLE 70

Geothermal Resources

34-70-101 to 34-70-110. (Repealed)

Source: L. 83: Entire article repealed, p. 1424, § 5, effective June 10.

Editor's note: (1) Provisions relating to geothermal resources, as adopted in 1983, are now contained in article 90.5 of title 37.

(2) This article was added in 1974. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

TITLE 35
AGRICULTURE

THE
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ROYAL ANTHROPOLOGICAL INSTITUTE

TITLE 35

AGRICULTURE

Cross references: For authority of boards of county commissioners to conduct agricultural research, see article 24 of title 30.

ADMINISTRATION

- Art. 1. Department of Agriculture, 35-1-101 to 35-1-113.
- Art. 1.5. Preemption, 35-1.5-101 to 35-1.5-103.
- Art. 2. Agricultural Statistics, 35-2-101 to 35-2-107.
- Art. 3. Conservation and Adjustment Law, 35-3-101 to 35-3-111.
- Art. 3.5. Nuisance Liability of Agricultural Operations, 35-3.5-101 to 35-3.5-103.

PEST AND WEED CONTROL

- Art. 4. Pest Control, 35-4-101 to 35-4-116.
- Art. 4.5. Pest Control Compact, 35-4.5-101 and 35-4.5-102.
- Art. 5. Pest Control Districts, 35-5-101 to 35-5-125.
- Art. 5.5. Colorado Noxious Weed Act, 35-5.5-101 to 35-5.5-119.
- Art. 6. Pest and Plant Quarantine (Repealed).
- Art. 7. Rodents and Predatory Animals - Control, 35-7-101 to 35-7-203.
- Art. 8. Weeds (Repealed).
- Art. 9. Pesticide Act, 35-9-101 to 35-9-128.
- Art. 10. Pesticide Applicators' Act, 35-10-101 to 35-10-128.
- Art. 11. Colorado Chemigation Act, 35-11-101 to 35-11-117.

ORGANICALLY GROWN PRODUCTS

- Art. 11.5. Organic Certification Act, 35-11.5-101 to 35-11.5-117.

FERTILIZERS

- Art. 12. Commercial Fertilizers and Soil Conditioners, 35-12-101 to 35-12-120.
- Art. 13. Anhydrous Ammonia, 35-13-101 to 35-13-109.

WEIGHTS AND MEASURES

- Art. 14. Measurement Standards, 35-14-101 to 35-14-134.

CENTRAL FILING SYSTEM

- Art. 15. State Central Filing System Board (Repealed).

POULTRY AND RABBITS

- Art. 20. Poultry and Rabbits (Repealed).
- Art. 21. Eggs, 35-21-101 to 35-21-108.
- Art. 22. Branding of Turkeys (Repealed).

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

- Art. 23. Fruits, Vegetables, and Other Agricultural Products, 35-23-101 to 35-23-116.
- Art. 23.5. Controlled Atmosphere Storage of Apples, 35-23.5-101 to 35-23.5-108.
- Art. 24. Dairy Products (Repealed).
- Art. 24.5. Aquaculture, 35-24.5-101 to 35-24.5-111.

- Art. 25. Colorado Bee Act, 35-25-101 to 35-25-117.
- Art. 26. Colorado Nursery Act, 35-26-101 to 35-26-115.
- Art. 27. Colorado Seed Act, 35-27-101 to 35-27-125.
- Art. 27.3. Colorado Seed Potato Act, 35-27.3-101 to 35-27.3-112.
- Art. 27.5. Forage Crop Certification, 35-27.5-101 to 35-27.5-108.

MARKETING AND SALES

- Art. 28. Marketing Act of 1939, 35-28-101 to 35-28-124.
- Art. 29. Colorado Seal of Quality, 35-29-101 to 35-29-109.
- Art. 29.5. Colorado Wine Industry Development Act, 35-29.5-101 to 35-29.5-106.
- Art. 30. Food Control, 35-30-101 and 35-30-102.
- Art. 31. Destruction of Food Products, 35-31-101 to 35-31-201.
- Art. 32. Farmers' Chemist for Sugar Factories (Repealed).
- Art. 33. Custom Processing of Meat Animals, 35-33-101 to 35-33-407.
- Art. 33.5. Sale of Meat, 35-33.5-101 to 35-33.5-307.
- Art. 34. Frozen Desserts (Repealed).
- Art. 35. Grain Inspection, 35-35-101 to 35-35-105.
- Art. 36. Grain Warehouses (Repealed).
- Art. 38. Farm Equipment Dealerships, 35-38-101 to 35-38-111.
- Art. 39. Gasohol Production and Use (Repealed).

PROTECTION OF LIVESTOCK

- Art. 40. Predatory Animals - Control, 35-40-100.2 to 35-40-207.

LIVESTOCK

- Art. 41. State Board of Stock Inspection Commissioners, 35-41-100.3 to 35-41-104.
- Art. 41.5. Alternative Livestock Act, 35-41.5-101 to 35-41.5-117.
- Art. 42. Animal Protection, 35-42-101 to 35-42-115.
- Art. 42.5. Animal Shelters and Pounds, 35-42.5-101.
- Art. 43. Branding and Herding, 35-43-101 to 35-43-213.
- Art. 44. Estrays, 35-44-101 to 35-44-114.
- Art. 45. Public Domain Range, 35-45-101 to 35-45-110.
- Art. 46. Fence Law, 35-46-101 to 35-46-115.
- Art. 47. Livestock - Running at Large, 35-47-101 to 35-47-103.
- Art. 48. Bulls, Rams, and Boars, 35-48-101 to 35-48-104.
- Art. 49. Livestock Water Tanks, 35-49-101 to 35-49-116.
- Art. 50. Livestock Health Act, 35-50-101 to 35-50-122.
- Art. 50.5. Confinement of Calves Raised for Veal and Pregnant Sows, 35-50.5-101 to 35-50.5-103.
- Art. 51. Animal Biological Products, 35-51-101 to 35-51-104.
- Art. 52. Hogs, 35-52-101 to 35-52-119.
- Art. 53. Transportation of Livestock, 35-53-101 to 35-53-133.
- Art. 53.5. Feedlot Certification, 35-53.5-101 to 35-53.5-115.
- Art. 54. Sale of Stock, 35-54-101 to 35-54-106.
- Art. 55. Public Livestock Markets, 35-55-101 to 35-55-119.
- Art. 56. Auctioneers of Livestock, 35-56-101 to 35-56-108.
- Art. 57. Colorado Beef Council, 35-57-101 to 35-57-120.
- Art. 57.5. Colorado Sheep and Wool Authority, 35-57.5-101 to 35-57.5-119.
- Art. 57.8. Colorado Horse Development Board, 35-57.8-101 to 35-57.8-111.
- Art. 57.9. Confidentiality of Livestock Information, 35-57.9-101 to 35-57.9-104.

MEAT PROCESSING

- Art. 58. Meat and Slaughter Plants (Repealed).
- Art. 59. Inedible Meat Rendering and Processing Act (Repealed).

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

Art. 60. Commercial Feeding Stuffs, 35-60-101 to 35-60-115.

FAIRS

Art. 65. Fairs, 35-65-100.3 to 35-65-408.

SOIL CONSERVATION

Conservation Districts

Art. 70. Conservation Districts, 35-70-101 to 35-70-122.

Soil Erosion

Art. 71. Soil Erosion - Dust Blowing - 1951 Act (Repealed).

Art. 72. Soil Erosion - Dust Blowing - 1954 Act, 35-72-101 to 35-72-108.

DEVELOPMENT AUTHORITY

Art. 75. Colorado Agricultural Development Authority Act, 35-75-101 to 35-75-205.

PET ANIMAL CARE

Art. 80. Pet Animal Care and Facilities Act, 35-80-101 to 35-80-117.

Art. 81. Hybrid Animals, 35-81-101 and 35-81-102.

ADMINISTRATION

ARTICLE 1

Department of Agriculture

Cross references: For creation of the department of agriculture and the transfer to that department of the state agricultural commission, the office of commissioner of agriculture, and other divisions, authorities, boards, or bureaus, under the "Administrative Organization Act of 1968", see § 24-1-123.

35-1-101.	Short title.		and environmental protection cash fund.
35-1-102.	Definitions.		
35-1-103.	Department of agriculture.	35-1-106.9.	Agriculture management fund - creation.
35-1-104.	Functions, powers, and duties.		
35-1-105.	State agricultural commission - creation - composition.	35-1-107.	Commissioner of agriculture - report - publications - deputy commissioner.
35-1-106.	Powers and duties of commission.	35-1-108.	Divisions created.
35-1-106.3.	Plant health, pest control, and environmental protection cash fund - creation.	35-1-109.	Employees interchangeable.
35-1-106.5.	Inspection and consumer services cash fund - creation.	35-1-110.	Legal adviser - legal actions.
35-1-106.7.	Conservation district grant fund - repeal.	35-1-111.	Records of receipts and expenditures - appropriations.
35-1-106.8.	Biological pest control cash fund - transfer of moneys to plant health, pest control,	35-1-112.	Licensing functions subject to periodic review. (Repealed)
		35-1-113.	Applications for licenses - authority to suspend licenses - rules.

35-1-101. Short title. This article shall be known and may be cited as the "State Department of Agriculture Act of 1949".

Source: L. 49: p. 185, § 1. CSA: C. 5, § 13(3). CRS 53: § 6-1-1. C.R.S. 1963: § 6-1-1.

35-1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agriculture" means the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production.

(1.5) Repealed.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Department" means the department of agriculture.

(5) "Division" means a primary subdivision of the department whose administrative head is directly responsible to the head of the department.

(6) "Livestock" means cattle, sheep, goats, swine, mules, poultry, horses, alternative livestock, as defined in section 35-41.5-102 (1), and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.

(7) "Section" means a subdivision of a division whose administrative head is directly responsible to the head of the division.

Source: L. 49: p. 185, § 2. CSA: C. 5, § 13(4). CRS 53: § 6-1-2. C.R.S. 1963: § 6-1-2. L. 94: (1.5) added and (6) amended, p. 1697, § 3, effective July 1. L. 99: (1.5) amended, p. 533, § 2, effective May 3.

Editor's note: Subsection (1.5)(b) provided for the repeal of subsection (1.5), effective July 1, 2009. (See L. 99, p. 533.)

35-1-103. Department of agriculture. There is hereby created a department of agriculture, referred to in this article as the "department". When any law of this state refers to the state department of agriculture, said law shall be construed as referring to the department of agriculture.

Source: L. 49: p. 186, § 3. CSA: C. 5, § 13(5). CRS 53: § 6-1-3. C.R.S. 1963: § 6-1-3. L. 68: p. 127, § 135.

35-1-104. Functions, powers, and duties. (1) The department has and shall exercise the following functions, powers, and duties:

(a) To inquire into the needs of agriculture of the state and make appropriate recommendations to the governor and the general assembly, except as to functions specifically assigned under state law to other state agencies;

(b) To perform all regulatory and inspection services relating to agriculture, except agricultural education and research and those regulatory functions relating primarily to the control of milk or milk products or to public health or assigned by law to other state agencies;

(c) To make investigations, conduct hearings, and make recommendations concerning all matters as related to the powers, duties, and functions as provided in this article;

(d) To cooperate with the United States department of agriculture in getting and disseminating production statistics, market and trade information concerning demand, supply, prevailing prices, and commercial movements of agricultural products and extent of products in storage, and cooperate with any other state or federal agency which in any manner may be helpful to agriculture;

(e) To annually fix such inspection and license fees and service charges within maximum limits provided by law as may be necessary to pay the cost of service performed and reasonable reserves for contingencies, including cost of depository, accounting, disbursement, auditing, and rental of quarters and facilities furnished by the state;

(f) To foster and encourage the standardizing, grading, inspection, labeling, handling, storage, and marketing of agricultural products and, after investigation and public hearings thereon, acting in cooperation with the United States department of agriculture, to establish

and promulgate standard grades and other standard classifications of and for agricultural products, except milk or milk products;

(g) To extend in every practicable way the distribution and sale of Colorado agricultural products throughout the markets of the world;

(h) To promote, in the interest of the producer, the distributor, and the consumer, the economical and efficient distribution of agricultural products of this state and to that end cooperate with the department of commerce of the United States and any other department or agency of the federal government;

(h.5) To promote, within existing appropriations, farmers' markets located within the state, including support or development of farmers' market organizations and working groups and the provision of education, outreach, and other assistance;

(i) To obtain and furnish information relating to the selection of shipping routes, adoption of shipping methods, or avoidance of delays in the transportation of agricultural products or helpful in the solution of other transportation problems connected with the distribution of agricultural products;

(j) To act as adviser to producers and distributors, when requested, and to assist them in the economical and efficient distribution of their agricultural product;

(k) To foster and encourage cooperation between producers and distributors in the interest of the general public;

(l) To act as a mediator or arbitrator in any controversy or issue that may arise between producers and distributors of any agricultural products concerning the grade or classification of such products;

(m) To determine for the protection of owners, buyers, creditors, or other interested parties the validity of warehouse receipts for any such products by verifying quantities, grade, and classification thereof;

(n) To enforce the state laws or regulations relating to fruit and vegetable inspection and grading; spray residue inspection and removal; the registration, inspection, and analysis of commercial feeding stuffs; the licensing of commission merchants, produce dealers, brokers, and agents handling agricultural products; the inspection and grading of poultry and eggs; the inspection of warehouses and frozen food locker plants; the inspection of commercial fertilizers; the control of plant and insect pests and diseases; the control and eradication of noxious and poisonous weeds; the inspection and sale of seeds; the control of contagious and infectious livestock diseases; and all other regulatory laws relating to agriculture;

(o) To inspect any nursery, orchard, farm garden, park, cemetery, greenhouse, or any private or public place which may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests; to establish and enforce quarantines; to issue and enforce orders and regulations for the control and eradication of said pests, wherever they may exist within the state; to perform such other duties relating to plants and plant products as may seem advisable and not contrary to law; and to inspect apiaries for diseases inimical to bees and beekeeping and enforce the laws relating thereto;

(p) to (t) Repealed.

(u) To license and inspect locker plants and enforce standards of construction and operation;

(v) To offer and award suitable premiums on livestock at the national western stock show;

(w) To take charge of the exhibition of Colorado agricultural products at international or national expositions;

(x) To cooperate with the United States department of agriculture or any other federal agency in control and eradication activities and programs involving predatory animals and rodent pests, plant diseases and insect pests, and noxious and poisonous weeds and to cooperate in the enforcement of the provisions of the federal seed act governing the movement of seeds in interstate commerce;

(y) To serve as the state agency to carry out the policies and purposes of the "Colorado Agricultural Conservation and Adjustment Act" and to promote and administer state plans for the same;

(z) Repealed.

(aa) On approval of the governor, to coordinate the management and operation of farms of state institutions and the exchange of agricultural products and equipment between state institutions;

(aa.1) To promulgate rules to specify the varieties of rapeseed, also known as canola, produced in the state and the geographical locations where each variety may be produced or stored, to establish districts and require registration of fields producing rapeseed with the appropriate district, and to enforce the provisions of this paragraph (aa.1) by requiring a producer to take appropriate action necessary to prevent cross-pollination, establishing reasonable penalties or costs or both, and determining and collecting the actual costs to be recovered from the producers to offset the cash funds expended for services performed by the department in the administration of this paragraph (aa.1);

(aa.2) To promulgate rules specifying the class of strawberries allowed for production of nursery stock in the state and the geographical locations where each class may be produced, establishing districts and requiring registration of fields producing strawberries with the appropriate district, and enforcing the provisions of this paragraph (aa.2) by requiring a producer to take appropriate actions necessary to prevent the introduction of diseases and pests, establishing reasonable penalties or costs or both, and determining and collecting the actual costs to be recovered from the producers to offset the cash funds expended for services performed by the department in the administration of this paragraph (aa.2);

(aa.3) To identify agricultural management areas in the state and to develop best management practices pursuant to section 25-8-205.5 (3), C.R.S., and to assist the commissioner in the promulgation of any rules and regulations authorized pursuant to said section;

(bb) Such other and additional functions, powers, and duties as may be provided by law;

(cc) To solicit grants, donations, and gifts for the purpose of funding noxious weed management projects, as described in section 35-5.5-116. Such moneys shall be transferred to the state treasurer, who shall credit the same to the noxious weed management fund.

(dd) For each division, section, program, or established funding source of the department, to solicit, receive, and spend grants, donations, and gifts. Such moneys shall be transmitted to the state treasurer, who shall credit the same to the particular cash fund or established funding source deemed most appropriate by the department.

(ee) To receive submissions of information as specified in section 24-33-112, C.R.S., from organizations that accept donations of conservation easements in gross for which a state income tax credit is claimed and to make the information available to the public upon request.

(2) Whenever any law provides for issuance or renewal by the department of any license, permit, certificate, registration, or other form of authorization and such law provides for specific dates for the issuance, renewal, or expiration of the same, notwithstanding the provisions of any such laws, and in order to promote efficiency and avoid duplication of effort, the department may, by rule and regulation, establish dates for such issuance, renewal, or expiration different from those established by law; but in no case shall the department change the duration or period of time during which any license, permit, certificate, registration, or other form of authorization may be valid or effective as established by law, unless otherwise provided.

(3) Whenever a specific law provides for the renewal by the department of any license previously issued and provides a license renewal fee to be paid by the applicant therefor, upon the issuance of any such renewal license after the applicable renewal date, the applicant shall pay in addition to the renewal fee a penalty in an amount equal to the said renewal fee, but not to exceed twenty-five dollars. The provisions of this subsection (3) shall not apply to articles 14, 20, and 21 of this title, nor to any other specific law which provides for a penalty for the issuance of a license, permit, or registration after the applicable renewal date.

(4) To the extent its costs are repaid by gifts, grants, or donations received pursuant to section 35-1-107 (6), and only to that extent, the department may provide educational programs and materials regarding any activity regulated under articles 12, 13, 14, 21, 33, and 60 of this title or article 16 of title 12, C.R.S.

Source: **L. 49:** p. 186, § 4. **CSA: C. 5,** § 13(6). **CRS 53:** § 6-1-4. **C.R.S. 1963:** § 6-1-4. **L. 69:** pp. 107, 108, §§ 1, 3. **L. 73:** p. 193, § 1. **L. 82:** (1)(z) repealed, p. 537, § 15, effective January 1, 1983. **L. 85:** (1)(b), (1)(f), and (1)(n) amended and (1)(p) to (1)(t) repealed, pp. 901, 902, §§ 3, 4, effective April 5. **L. 87:** (1)(aa.1) added, p. 1276, § 1, effective May 28. **L. 90:** (1)(aa.3) added, p. 1334, § 5, effective July 1. **L. 96:** (1)(cc) added, p. 763, § 2, effective May 23. **L. 2003:** (4) added, p. 1723, § 1, effective May 14. **L. 2004:** (1)(aa.2) added, p. 1049, § 1, effective August 4. **L. 2006:** (1)(dd) added, p. 17, § 1, effective March 6. **L. 2007:** (1)(ee) added, p. 1228, § 2, effective August 3. **L. 2012:** (1)(h.5) added, (SB 12-048), ch. 16, p. 44, § 6, effective March 15.

Editor's note: Although subsection (3) references article 20 of this title, that article was repealed, effective April 12, 1989.

Cross references: (1) For rule-making and licensing procedures, see article 4 of title 24; for the "Colorado Agricultural Conservation and Adjustment Act", see article 3 of this title; for the noxious weed management fund, see § 35-5.5-116.

(2) For the legislative declaration in the 2012 act adding subsection (1)(h.5), see section 1 of chapter 16, Session Laws of Colorado 2012.

35-1-105. State agricultural commission - creation - composition. (1) (a) There is hereby created the state agricultural commission, referred to in this article as the "commission", which shall consist of nine members, each of whom shall be appointed by the governor, with the consent of the senate, for terms of four years each. Of such members, one member shall be appointed from each of the four agricultural districts, as defined in paragraph (c) of this subsection (1), and five members shall be appointed from the state at large; except that no more than three members shall be appointed from any one agricultural district. No more than five of the nine members shall be members of the same political party.

(b) The members of the commission shall be appointed from persons who are currently or were previously actively engaged in the business of agriculture and allied activities, but a majority of the commission shall be appointed from persons actively engaged in the business of agriculture in such a manner that representation of no agricultural commodity organization shall constitute a majority of the commission. A vacancy on the commission shall be filled by the governor by the appointment of a qualified person.

(c) For the purposes of representation on the state agricultural commission, this state is divided into four agricultural districts as follows:

(I) The city and county of Denver and the counties of Adams, Arapahoe, Douglas, and Jefferson shall constitute the first district.

(II) The counties of Boulder, Cheyenne, Clear Creek, Elbert, Gilpin, Kit Carson, Larimer, Lincoln, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, and Yuma shall constitute the second district.

(III) The counties of Alamosa, Baca, Bent, Conejos, Costilla, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Las Animas, Mineral, Otero, Prowers, Pueblo, Rio Grande, Saguache, and Teller shall constitute the third district.

(IV) The counties of Archuleta, Chaffee, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, and Summit shall constitute the fourth district.

(2) The commission shall elect from its members a chairman, vice-chairman, and such other commission officers as it shall determine. The commissioner of agriculture, in the discretion of the commission, may serve as secretary of the commission but shall not be eligible to appointment as a member. All commission officers shall hold their offices at the pleasure of the commission. Regular meetings of the commission shall be held not less than once every three months at such times as may be fixed by resolution of the commission. Special meetings may be called by the chairman, by the commissioner, or by a majority of members of the commission at any time on at least three days' prior notice by mail or, in cases of emergency, on twenty-four hours' notice by telephone or telegraph. The commission shall adopt, and at any time may amend, bylaws in relation to its meetings and the

transaction of its business. A majority shall constitute a quorum of the commission. Members shall serve without compensation but shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their places of residence in attendance at meetings.

Source: L. 49: p. 190, § 5. CSA: C. 5, § 13(7). CRS 53: § 6-1-5. C.R.S. 1963: § 6-1-5. L. 65: p. 175, § 1. L. 68: p. 127, § 136. L. 83: (1)(c)(I) and (1)(c)(II) amended, p. 1310, § 1, effective May 26. L. 2008: (1)(a) and (1)(b) amended, p. 631, § 1, effective August 5.

35-1-106. Powers and duties of commission. (1) In addition to all other powers and duties conferred upon the commission by this article, the commission has the following specific powers and duties:

(a) To formulate the general policy with respect to the management of the department of agriculture and the general policy with respect to the enforcement of regulatory and service laws, rules, and regulations pertaining to agriculture;

(b) To make or cause to be made, within the limits of appropriations, such studies as it deems necessary to guide the commissioner concerning the agricultural policy of this state;

(c) To advise and make recommendations to the governor and the general assembly on matters pertaining to agriculture within this state;

(d) To require the preparation and transmittal by the commissioner of an annual departmental report and to establish publication policies for the department in accordance with the provisions of section 24-1-136, C.R.S.;

(e) To furnish the commissioner with advice on any agricultural or livestock problem with which he may be confronted;

(f) To promulgate and adopt all department of agriculture budgets for submission to the controller of this state in accordance with law and to approve and pass upon all annual budgets for expenditures of money from the various funds of the department and to review such budgets at each meeting of the commission;

(g) To approve prior to their release all rules and regulations issued by the commissioner and considered necessary and proper to carry out the provisions of this article;

(h) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties of the commission. Upon the failure or refusal of any witness to obey any subpoena, the commission may petition the district court, and, upon proper showing, the court may order a witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as contempt of court.

(i) To establish and appoint, as it may deem necessary or advisable, such advisory committees from the groups affected to advise and confer with the commission or the commissioner concerning aspects of agricultural or livestock products, marketing, disease, or any other pertinent matter;

(j) If not already required by law, to require and fix the bonds of such employees of the department as may be deemed necessary;

(k) To avoid duplication of effort within the department and to clarify responsibilities under this title (except part 2 of article 7 and articles 14, 42, 51, 65, 70, and 72) and articles 11 and 16 of title 12 and article 24 of title 30, C.R.S.; to enter into cooperative agreements with the state board of health, the board of governors of the Colorado state university system, or any other state board or commission which is authorized by law to perform like or similar duties to those delegated by law to this commission, wherein it shall be prescribed whether this commission, the state board of health, the board of governors of the Colorado state university system, or such other state board or commission shall perform and be responsible for the performance of such duties mentioned in said agreements, so that there is no duplication of effort as between this commission and the state board of health, the board of governors of the Colorado state university system, or any other state board or commission; and to enter into agreements with the state board of health, the board of governors of the Colorado state university system, or any other state board or commission

relative to the cooperative use by this commission of any laboratories, equipment, or facilities owned or used by this commission or any other state board or commission;

(l) To employ any person, partnership, or corporation for services in carrying out the provisions of this title (except part 2 of article 7 and articles 14, 42, 51, 65, 70, and 72) and articles 11 and 16 of title 12 and article 24 of title 30, C.R.S., and not inconsistent with section 13 of article XII of the state constitution or to provide information, statistics, or data deemed beneficial by the commission to livestock and agriculture in the state of Colorado;

(m) The commission shall act only by resolution adopted at a duly called meeting of the commission, and no individual member of the commission shall exercise individually any administrative authority with respect to the department;

(n) To comply with the requirements of section 24-1-136.5, C.R.S., concerning the preparation of operational master plans, facilities master plans, and facilities program plans, as if the commission were the executive director of the department;

(o) To promulgate rules requiring the owners of alternative livestock, as defined in section 35-41.5-102 (1), to obtain certification showing that the alternative livestock herd meets the requirements of a tuberculosis surveillance plan approved by the state veterinarian and meets regulations pertaining to the control of infectious diseases and parasites as determined by the department. This paragraph (o) shall not apply if the owner of the alternative livestock is a zoological park that is accredited by the American zoo and aquarium association; except that any intrastate transfer of alternative livestock by a zoological park that is accredited by the American zoo and aquarium association to any person or entity that is not accredited by the American zoo and aquarium association is subject to the rules of the commission adopted under this paragraph (o).

(p) (I) In consultation with interested industry groups, to fix, assess, and collect fees in amounts sufficient to recover the department's direct and indirect costs incurred in carrying out and enforcing the provisions of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S.

(II) Fees established pursuant to this paragraph (p) that exceed the amount of any corresponding fees that were in effect as of April 1, 2003, and any new or additional fees established after April 1, 2003, shall be reported, on or before December 1 of each year, to the agriculture, natural resources and energy committee of the senate and the agriculture, livestock, and natural resources committee of the house of representatives.

(III) (Deleted by amendment, L. 2007, p. 1902, § 1, effective July 1, 2007.)

(2) The parks and wildlife commission shall review the rules concerning alternative livestock proposed by the commission pursuant to paragraph (o) of subsection (1) of this section and shall make recommendations to the commission concerning such rules. The commission shall not adopt or implement rules concerning alternative livestock that impact native big game wildlife without the prior approval of the parks and wildlife commission. In addition, the parks and wildlife commission may propose rules to the commission designed to protect native big game wildlife.

Source: L. 49: p. 191, § 6. CSA: C. 5, § 13(8). CRS 53: § 6-1-6. L. 55: p. 132, § 1. C.R.S. 1963: § 6-1-6. L. 64: p. 122, § 21. L. 68: p. 127, § 137. L. 69: p. 108, § 3. L. 83: (1)(d) amended, p. 841, § 67, effective July 1. L. 94: (1)(n) added, p. 566, § 16, effective April 6; (1)(o) and (2) added, p. 1697, §§ 4, 5, effective July 1. L. 95: (1)(o) amended, p. 18, § 2, effective March 9. L. 2002: (1)(k) amended, p. 1247, § 23, effective August 7. L. 2003: (1)(p) added, p. 1723, § 2, effective May 14. L. 2005: (1)(p)(III) amended, p. 1267, § 1, effective July 1. L. 2007: IP(1) and (1)(p)(III) amended, p. 1902, § 1, effective July 1. L. 2012: (2) amended, (HB 12-1317), ch. 248, p. 1235, § 92, effective June 4.

Cross references: For the state personnel system, see § 13 of article XII of the state constitution.

35-1-106.3. Plant health, pest control, and environmental protection cash fund - creation. (1) There is hereby created in the state treasury the plant health, pest control, and environmental protection cash fund.

(2) All revenues collected in pursuit of the department's efforts in relation to plant health, pest control, and environmental protection shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund. The commission may establish a fee schedule to cover the direct and indirect costs of the collection and distribution of beneficial insects.

(3) The plant health, pest control, and environmental protection cash fund shall consist of any fees, fines, or penalties collected pursuant to articles 4, 9, 10, 11, 11.5, 25, 26, 27, and 27.5 of this title; any fees, fines, or penalties collected pursuant to article 8 of title 25, C.R.S.; any fees collected under article 12 of this title for the purpose of funding groundwater protection activities; and all revenues collected in pursuit of the department's efforts to conduct biological pest control. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of implementing, administering, and enforcing the provisions of articles 4, 9, 10, 11, 11.5, 25, 26, 27, and 27.5 of this title and of article 8 of title 25, C.R.S.; except that any appropriation for the indirect costs of issuing chemigation permits pursuant to section 35-11-106 shall not exceed the amount specified in section 35-11-106 (3) (b). Any moneys from the fund that are allocated for biological pest control shall supplement any general fund moneys appropriated for that purpose.

(4) All interest derived from the deposit and investment of moneys in the plant health, pest control, and environmental protection cash fund shall be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(5) Notwithstanding section 24-75-402, C.R.S., the target reserve balance for the plant health, pest control, and environmental protection cash fund shall be fifty percent of the amount expended from the fund during each fiscal year.

Source: L. 2009: Entire section added, (HB 09-1249), ch. 87, p. 314, § 1, effective July 1.

35-1-106.5. Inspection and consumer services cash fund - creation. (1) All fees, fines, and penalties collected pursuant to articles 12, 13, 14, 21, 33, and 60 of this title and article 16 of title 12, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund or used for any purpose other than to offset the costs of implementing, administering, and enforcing the provisions of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S. Moneys in the fund are subject to annual appropriation to the department for such purposes.

(2) Notwithstanding section 24-75-402 (2) (g), C.R.S., the target reserve balance for the inspection and consumer services cash fund shall be fifty percent of the amount expended from the fund during the fiscal year.

(3) (Deleted by amendment, L. 2007, p. 1902, § 2, effective July 1, 2007.)

Source: L. 2003: Entire section added, p. 1724, § 3, effective May 14. **L. 2005:** (1) and (3) amended, p. 1267, § 2, effective July 1. **L. 2007:** (1) and (3) amended, p. 1902, § 2, effective July 1.

35-1-106.7. Conservation district grant fund - repeal. (1) There is hereby created in the state treasury the conservation district grant fund. The fund shall consist of moneys transferred pursuant to section 39-29-109.3 (2) (b), C.R.S. Moneys in the fund are specifically and continuously appropriated to the department. The department shall grant moneys in the fund to conservation districts for the purpose of implementing and maintaining soil and water conservation efforts. All moneys credited to the fund and all interest

earned on the investment of moneys in the fund shall be a part of the fund and shall not be transferred or credited to the general fund or to any other fund.

(2) This section is repealed, effective December 31, 2022.

Source: L. 2006: Entire section added, p. 1649, § 2, effective June 5. L. 2007: (1) amended, p. 2047, § 90, effective June 1. L. 2008: (1) amended, p. 1872, § 11, effective June 2. L. 2011: (2) amended, (HB 11-1156), ch. 134, p. 471, § 1, effective May 4.

35-1-106.8. Biological pest control cash fund - transfer of moneys to plant health, pest control, and environmental protection cash fund. (1) All revenues collected in pursuit of the department's efforts to conduct its program of biological pest control shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the biological pest control cash fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 315, § 2, effective July 1, 2009.)

Source: L. 2007: Entire section added, p. 919, § 1, effective May 17. L. 2009: Entire section amended, (HB 09-1249), ch. 87, p. 315, § 2, effective July 1.

35-1-106.9. Agriculture management fund - creation. There is hereby created in the state treasury the agriculture management fund. The fund shall consist of moneys transferred pursuant to section 38-13-116.7 (3), C.R.S. The department shall use such moneys to fund agricultural efforts approved by the commissioner, including, but not limited to, funding additional department employees necessary to implement and manage approved programs. Moneys may be used for direct assistance or grant assistance for conservation districts created pursuant to article 70 of this title. Moneys in the fund are subject to annual appropriation to the department. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund and shall not be transferred or credited to the general fund or any other fund.

Source: L. 2008: Entire section added, p. 865, § 3, effective January 22, 2009.

35-1-107. Commissioner of agriculture - report - publications - deputy commissioner. (1) The commissioner of agriculture shall be the chief administrative officer of the department of agriculture and shall have direct control and management of its functions, subject only to the powers and duties of the commission as prescribed in this article. The commissioner shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The commissioner shall be allowed traveling and subsistence expenses actually and necessarily incurred in the performance of official duties. The commissioner shall maintain an office at the state capitol buildings group and shall be custodian of all property and records of the department.

(2) The commissioner shall require of the head of each agency assigned to the department an annual report containing such information and submitted at such time as the commissioner shall decide.

(3) The commissioner shall exercise control over publications of the department and subordinate units thereof and shall cause such publications as are approved for circulation in quantity outside the executive branch to be issued in accordance with the provisions of section 24-1-136, C.R.S.

(4) The commissioner may appoint the deputy commissioner of agriculture, pursuant to section 13 of article XII of the state constitution. Subject to the supervision of the commissioner, the deputy commissioner shall have all the powers, duties, and responsibilities

ities of the commissioner, as provided by law, and shall exercise such powers, duties, and responsibilities in the absence of the commissioner and when so instructed by the commissioner.

(5) The commissioner is authorized to adopt all reasonable rules for the implementation of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S. Such rules may include, but are not limited to:

(a) The establishment of classifications and sub-classifications for any license authorized under said articles; and

(b) The establishment of any penalty fees that may be assessed for violations of said articles or of rules adopted under said articles or under this section.

(6) The commissioner is authorized to accept gifts, grants, and donations of any kind from any private or public source and, upon receipt, shall transmit all such gifts, grants, or donations to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(7) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving gifts, grants, or donations, securing uniformity of rules, and entering into reciprocal licensing agreements.

(8) Repealed.

Source: L. 49: p. 192, § 7. CSA: C. 5, § 13(9). CRS 53: § 6-1-7. L. 55: p. 134, § 2. C.R.S. 1963: § 6-1-7. L. 64: p. 122, § 22. L. 69: p. 107, § 2. L. 71: p. 105, § 15. L. 77: (4) added, p. 1576, § 1, effective May 16. L. 83: (2) and (3) amended, p. 841, § 68, effective July 1. L. 96: (2) amended, p. 1218, § 10, effective August 7. L. 2003: (1) and (3) amended and (5), (6), and (7) added, p. 1724, § 4, effective May 14. L. 2005: (6) amended, p. 1268, § 3, effective July 1. L. 2007: (6) amended, p. 1903, § 3, effective July 1. L. 2009: (8) added, (SB 09-158), ch. 387, p. 2094, § 2, effective August 5.

Editor's note: Subsection (8)(b) provided for the repeal of subsection (8), effective February 1, 2010. (See L. 2009, p. 2094.)

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

35-1-108. Divisions created. There is hereby created in the department an administrative services division, a division of plant industry, a division of animal industry, a division of markets, and a division of inspection and consumer services.

Source: L. 49: p. 192, § 8. CSA: C. 5, § 13(10). CRS 53: § 6-1-8. C.R.S. 1963: § 6-1-8. L. 67: p. 528, § 1.

35-1-109. Employees interchangeable. It is the duty of the commissioner of agriculture in the administration of his department to so organize the same that all employees of the department, so far as possible, shall be interchangeable in work assignment to the end that they may be shifted within the department so as to meet seasonal and emergency demands upon any division or section of the department and the number of such help kept to a minimum possible for efficient operation.

Source: L. 49: p. 196, § 12. CSA: C. 5, § 13(14). CRS 53: § 6-1-9. C.R.S. 1963: § 6-1-9.

35-1-110. Legal adviser - legal actions. The attorney general shall be the legal adviser for the department of agriculture and shall defend it in all actions and proceedings brought against it. The district attorney of the judicial district in which a cause of action may arise shall bring any action, civil or criminal, requested by the commissioner to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or

to prosecute for the violation of or for the enforcement of, the agricultural laws or the standards, orders, rules, and regulations of the department established by or issued under the provisions of this article. If the district attorney fails to act, the commissioner may bring any such action and shall be represented by the attorney general or, with the approval of the commission, by special counsel.

Source: L. 49: p. 196, § 14. CSA: C. 5, § 13(16). CRS 53: § 6-1-11. C.R.S. 1963: § 6-1-11.

35-1-111. Records of receipts and expenditures - appropriations. (1) The department shall maintain records, in the manner prescribed by the controller, on all receipts and expenditures made with respect to each service for which moneys are credited to the general fund under the provisions of articles 1 to 13, 26, and 27 of this title and article 24 of title 30, C.R.S.

(2) The general assembly shall appropriate moneys from the general fund for the administration of the services rendered by the department for which moneys are credited to the general fund under the provisions of articles 1 to 13, 26, and 27 of this title and article 24 of title 30, C.R.S.

Source: L. 65: pp. 196, 201, §§ 7, 18, 21. C.R.S. 1963: §§ 6-16-1, 7-17-1, 8-19-1.

35-1-112. Licensing functions subject to periodic review. (Repealed)

Source: L. 79: Entire section added, p. 1611, § 7, effective June 7. L. 81: (4) amended, p. 1704, § 1, effective June 5. L. 85: (4) amended, p. 1139, § 1, effective May 31. L. 88: (1), (2), and (4) amended, p. 932, § 22, effective April 28. L. 90: Entire section repealed, p. 1597, § 13, effective April 3.

35-1-113. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily

limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1309, § 45, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

ARTICLE 1.5

Preemption

35-1.5-101.	Scope of article.	35-1.5-103.	Preemption.
35-1.5-102.	Definitions.		

35-1.5-101. Scope of article. (1) Nothing in this article shall be construed to limit the authority of a local government to:

(a) Zone for the sale or storage of any agricultural chemical, provide or designate sites for disposal of any agricultural chemical or container, regulate the discharge of any agricultural chemical into sanitary sewer systems, adopt regulations pursuant to a storm water management program that is consistent with federal or state regulation, adopt or enforce building and fire code requirements, or to protect surface or groundwater drinking water supplies in accordance with current state or federal applicable law;

(b) Comply with any federal or state law or regulation or take any action otherwise prohibited by this article in order to comply with any federal or state requirement or avoid a fine or other penalty under federal or state law;

(c) Implement a cooperative agreement with any federal or state agency;

(d) Regulate the use of agricultural chemicals on property in which the local government has a fee simple absolute ownership interest;

(e) Issue local occupational licenses.

(2) The lack of a provision in this article explicitly preempting local government regulation of any particular agricultural chemical not listed in section 35-1.5-102 (2) shall not be construed as an implicit grant of authority to a local government pursuant to this article to regulate on that subject.

Source: L. 94: Entire article added, p. 923, § 1, effective April 28.

35-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Adjuvant” means a material added to an agrichemical solution to improve performance.

(2) “Agricultural chemical” means any device, plant nutrient, animal nutrient, or adjuvant and any treated, altered, or engineered plant or animal material.

(3) “Animal nutrient” means any feed subject to article 60 of this title and any material for the maintenance, growth, or production of animals.

(4) “Device” means a device as defined in section 35-9-103 (5).

(5) “Local government” means a county, home rule county, city and county, city, home rule city, special district, or other political subdivision of the state.

(6) “Plant nutrient” means:

(a) (Deleted by amendment, L. 2008, p. 1625, § 2, effective August 5, 2008.)

(b) A plant amendment as defined in section 35-12-103 (24);

(c) A plant nutrient as defined in section 35-12-103 (25);

(d) A soil conditioner as defined in section 35-12-103 (29);

(e) Anhydrous ammonia as defined in section 35-13-102 (1);

(f) A commercial fertilizer as defined in section 35-12-103 (3);

(g) Treated or untreated manure;

- (h) Water runoff from a confined animal feeding operation that is captured and then applied to a field; and
- (i) A plant growth regulator.
- (7) "Use" means all aspects of the handling of agricultural chemicals, including, without limitation, the mixing, loading, application or administration, spill control, and disposal of an agricultural chemical or its container.

Source: L. 94: Entire article added, p. 923, § 1, effective April 28. **L. 2008:** (6)(a) to (6)(d) and (6)(f) amended, p. 1625, § 2, effective August 5. "

35-1.5-103. Preemption. (1) No local government shall adopt or continue in effect any ordinance, rule, charter provision, or statute regarding the use of any agricultural chemical and pertaining to:

- (a) The name of the product, name and address of the manufacturer, and applicable registration numbers;
- (b) Directions for use, use classification (general or restricted), mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker protection standards, application and storage container specifications, storage and disposal of the agricultural chemical or container, or limitations to prevent unreasonable adverse effects such as required intervals between application and harvest of food or feed crops, rotational crop restrictions, warnings against use on certain crops, animals, objects, or in or adjacent to certain areas;
- (c) Warnings and precautionary statements, hazards to humans, children, domestic animals, or the environment, physical or chemical hazards, or statements of practical treatment; or
- (d) Record-keeping requirements.

Source: L. 94: Entire article added, p. 923, § 1, effective April 28.

ARTICLE 2

Agricultural Statistics

35-2-101.	Information furnished - by whom.	35-2-105.	commission - penalty. Failure to give information to assessor - penalty.
35-2-102.	Statistical reports.	35-2-106.	Reports confidential.
35-2-103.	Cooperation with secretary of agriculture.	35-2-107.	Contracts to remain in force.
35-2-104.	Failure to give information to		

35-2-101. Information furnished - by whom. The commissioner of agriculture, acting under the direction of the state agricultural commission in the collection of information necessary to the performance of his or her duties as such commissioner and subject to the provisions of section 24-1-136, C.R.S., in regard to publication of such information, is authorized to call upon the several state, county, city, town, and school district officers and officers of the several state institutions of education and penal and other state institutions, and it is the duty of all such officers to furnish, upon written or printed request of the commissioner, such information as may be required for properly setting forth the resources of the state and their development, upon blanks furnished by the commissioner. Each owner, operator, or manager of any manufacturing, mining, or other business establishment operating in this state, or other person having information necessary for carrying out the purposes of this article, upon the request of the commissioner, shall furnish the same upon blanks supplied by the commission. Except as otherwise provided by law, any agricultural statistics collected by any of the several state, county, city, town, school district, or institutional officers specified in this section shall be collected in accordance with the requirements of this article.

Source: L. 19: p. 632, § 1. C.L. § 436. CSA: C. 84, § 8. CRS 53: § 6-2-1. C.R.S. 1963: § 6-2-1. L. 64: p. 123, § 23. L. 83: Entire section amended, p. 842, § 69, effective July 1. L. 2002: Entire section amended, p. 1860, § 161, effective July 1.

35-2-102. Statistical reports. It is the duty of the assessor of each county in this state, at the time of making the annual assessment of property, to collect such statistics in relation to population, farm operations, the principal farm products, agricultural resources, and livestock of the county as may be required by the commissioner of agriculture, and it is the duty of all persons within this state having information relative to such matters to give such information to the assessor upon his request therefor. The original sheets on which such statistics are collected shall be forwarded to the commissioner of agriculture as soon as they are completed, but not later than June 1 of each year, immediately following their collection. From these original sheets there shall be compiled in the office of the state agricultural commission complete reports on all subjects covered for each county in the state. The blanks to be used by county assessors in the collection of statistics required by the state agricultural commission shall be supplied by the commission, and the form thereof shall be fixed by the commissioner of agriculture, after conference with a representative of Colorado state university and with the bureau of crop estimates of the United States department of agriculture through the official representative for Colorado. This report shall be issued subject to the provisions of section 24-1-136, C.R.S.

Source: L. 19: p. 633, § 2. C.L. § 437. CSA: C. 84, § 9. CRS 53: § 6-2-2. C.R.S. 1963: § 6-2-2. L. 64: p. 124, § 24. L. 83: Entire section amended, p. 842, § 70, effective July 1.

35-2-103. Cooperation with secretary of agriculture. To facilitate the work of collecting agricultural and livestock statistics required by this article, the commissioner of agriculture is empowered to enter into a cooperative agreement with the secretary of agriculture of the United States, or his accredited representatives, under which the facilities and information of the bureau of crop estimates of the United States department of agriculture relating to the state of Colorado are made available for the use of the state agricultural commission, and the facilities and information of said state agricultural commission are likewise made available for the use of said bureau of crop estimates.

Source: L. 19: p. 634, § 4. C.L. § 439. CSA: C. 84, § 11. CRS 53: § 6-2-3. C.R.S. 1963: § 6-2-3.

35-2-104. Failure to give information to commission - penalty. Any person having in his possession information necessary to carrying out the purposes of this article, who fails or refuses to furnish such information to the state agricultural commission upon proper request by the commissioner of agriculture, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars and costs of prosecution. Any county or state official who fails or refuses to collect or compile for the state agricultural commission such information as he is required by this article to collect and compile, when properly requested by the commissioner of agriculture so to do, and who is supplied with proper blanks for collecting and compiling the same, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars and costs of prosecution.

Source: L. 19: p. 634, § 6. C.L. § 441. CSA: C. 84, § 13. CRS 53: § 6-2-4. C.R.S. 1963: § 6-2-4.

35-2-105. Failure to give information to assessor - penalty. Any person who is required by this article to give information to the county assessor concerning farm operations, crop production, agricultural resources, livestock, or other matters covered by this article, and who, upon proper request being made, fails, refuses, or neglects to do so,

is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars and shall pay all costs of the prosecution. All fines and penalties collected under the provisions of this article shall be paid into the school funds of the county in which such conviction is had.

Source: L. 19: p. 634, § 7. C.L. § 442. CSA: C. 84, § 14. CRS 53: § 6-2-5. C.R.S. 1963: § 6-2-5.

35-2-106. Reports confidential. The reports made to the commissioner of agriculture by individuals, firms, or corporations, or to any of the several state, county, city, town, school district, or institutional officers specified in section 35-2-101, shall be regarded as confidential and not for the purpose of disclosing personal or corporate affairs. In the reports of the commissioner, no use shall be made of the names of individuals, firms, or corporations supplying the information called for in this article. Any officer or employee of the state agricultural commission disclosing such information is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars and costs of prosecution or by imprisonment in the county jail for a period of not more than one year.

Source: L. 19: p. 635, § 8. C.L. § 443. CSA: C. 84, § 15. CRS 53: § 6-2-6. C.R.S. 1963: § 6-2-6. L. 2002: Entire section amended, p. 1860, § 162, effective July 1.

ANNOTATION

Law reviews. For article, “Necessity for Exceptions to Instructions in Colorado”, see 1 Rocky Mt. L. Rev. 102 (1929).

35-2-107. Contracts to remain in force. All existing contracts and obligations of the state agricultural commission shall remain in full force and effect and shall be performed by the state agricultural commission, and particularly that certain contract entered into on April 30, 1919, by and between the state of Colorado, by its commissioner of agriculture, and the United States, by the acting secretary of agriculture of the United States, for the establishment and maintenance of a cooperative crop and livestock reporting service.

Source: L. 35: p. 1080, § 10. CSA: C. 157, § 10. CRS 53: § 6-2-7. C.R.S. 1963: § 6-2-7.

ARTICLE 3

Conservation and Adjustment Law

35-3-101.	Short title.		agency.
35-3-102.	Legislative declaration.	35-3-108.	Districts and communities.
35-3-103.	Definitions.	35-3-109.	Community and county committees.
35-3-104.	Designation of state agency.		
35-3-105.	Administration of state plans.	35-3-110.	State advisory committee - sunset review. (Repealed)
35-3-106.	Administration of funds.		Reports - publications.
35-3-107.	Powers and duties of state	35-3-111.	

35-3-101. Short title. This article shall be known and may be cited as the “Colorado Agricultural Conservation and Adjustment Act”.

Source: L. 37: p. 257, § 1. CSA: C. 5, § 61. CRS 53: § 6-3-1. C.R.S. 1963: § 6-3-1.

35-3-102. Legislative declaration. (1) It is recognized and declared:
(a) That the soil resources and fertility of the land of this state, and the economic use

thereof, the prosperity of the farming population of this state, and the waters of the rivers of this state, and the prevention of floods are matters affected with a public interest;

(b) That the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful and unscientific use of its soil resources, by floods and impairment of its rivers as a result of soil erosion, and by the decrease in the purchasing power of the net income per person on farms in the state as compared with the net income per person in the state not on farms;

(c) That said evils have been augmented and are likely to be augmented by similar conditions in other states and are so interrelated with such conditions in other states that the remedying of such conditions in this state requires action by this state in cooperation with the governments and agencies of other states and of the United States and requires assistance therein by the government and agencies of the United States;

(d) That the formulation and effectuation by this state of state plans, in conformity with the provisions of section 7 of the "Soil Conservation and Domestic Allotment Act", is calculated to remedy said conditions and will tend to advance the public welfare of this state.

(2) In order to promote the welfare of the people of this state by aiding in the preservation and improvement of soil fertility, in the promotion of the economic use and conservation of land, in the diminution of exploitation and wasteful and unscientific use of soil resources, in the protection of rivers against the results of soil erosion, and in the reestablishment, at as rapid a rate as is practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the net income per person not on farms that prevailed during the five-year period, August 1909 to July 1914, inclusive, as determined from statistics available in the United States department of agriculture, and the maintenance of such ratio, the state of Colorado assents to and accepts the provisions of the "Soil Conservation and Domestic Allotment Act" and adopts the policy and purpose of cooperating with the government and agencies of other states and of the United States in the accomplishment of the policy and purposes specified in section 7 of said act, subject to the following limitations:

(a) The powers conferred in this article shall be used to assist voluntary action calculated to effectuate such purposes.

(b) Such powers shall not be used to discourage the production of supplies of foods and fibers in this state sufficient when taken together with the production thereof in other states of the United States to maintain normal domestic human consumption as determined by the secretary of agriculture of the United States from the records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodities that were forced into domestic consumption by a decline in exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities.

(c) In carrying out the purposes specified in this section due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

Source: L. 37: p. 257, § 2. CSA: C. 5, § 62. CRS 53: § 6-3-2. C.R.S. 1963: § 6-3-2.

Cross references: For section 7 of the "Soil Conservation and Domestic Allotment Act", see 16 U.S.C. § 590g.

35-3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Other states of the United States" includes Puerto Rico.

(2) "Person" includes an individual, corporation, partnership, firm, business trust, joint stock company, association, syndicate, group, pool, joint venture, and any other unincorporated association or group.

Source: L. 37: p. 259, § 3. CSA: C. 5, § 63. CRS 53: § 6-3-3. C.R.S. 1963: § 6-3-3.

35-3-104. Designation of state agency. (1) The department of agriculture, referred to in this article as the “department”, is designated and authorized as the state agency to carry out the policy and purposes of this article and to formulate and administer state plans pursuant to the terms of this article.

(2) The department shall perform its duties and functions as such agency under this article separately and distinctly from the performance of its duties and functions under any other law or in any other capacity; except that the department may utilize the services and the assistance of its personnel and facilities normally used in the performance of such other functions if it finds that the utilization of such services and assistance is necessary to, or is calculated to assist substantially in, the effective administration of this article and that such facilities may be utilized without interference with the effective performance of such other duties and functions.

Source: L. 37: p. 259, § 4. CSA: C. 5, § 64. CRS 53: § 6-3-4. C.R.S. 1963: § 6-3-4.

35-3-105. Administration of state plans. (1) The department is authorized to formulate for each calendar year and to submit to the secretary of agriculture of the United States, for and in the name of this state, a state plan for carrying out the purposes of this article during such calendar year.

(2) The department is authorized to modify or revise any such plan in whatever manner, consistent with the terms of this article, it finds necessary to provide for more substantial furtherance of the accomplishment of the purposes of this article.

(3) Each such plan shall provide for such participation in its administration, by voluntary county and community committees or associations of agricultural producers organized for such purposes, as the department determines to be necessary or proper for the effective administration of the plan.

(4) Each such plan shall provide, through agreements with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities, as the department determines to be calculated to effectuate as substantial an accomplishment of the purposes of this article as may reasonably be achieved through action of this state, and for payments to agricultural producers in connection with such agreements or methods in such amounts as the department determines to be fair and reasonable and calculated to promote such accomplishment of the purposes of this article without depriving such producers of a voluntary and uncoerced choice of action.

(5) Any such plan shall provide for such educational programs as the department determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this article.

(6) Each such plan shall contain an estimate of expenditures necessary to carry out such plan, together with a statement of such amount as the department determines to be necessary to be paid by the secretary of agriculture of the United States as a grant to aid of such plan under section 7 of the “Soil Conservation and Domestic Allotment Act”, in order to provide for the effective carrying out of such plan, and shall designate the amount and due date of each installment of such grant, the period to which such installment relates, and the amount determined by the department to be necessary for carrying out such plan during such period.

(7) The department shall provide for such investigations as it finds to be necessary for the formulation and administration of such plans.

Source: L. 37: p. 260, § 5. CSA: C. 5, § 65. CRS 53: § 6-3-5. C.R.S. 1963: § 6-3-5.

Cross references: For section 7 of the “Soil Conservation and Domestic Allotment Act”, see 16 U.S.C. § 590g.

35-3-106. Administration of funds. (1) The department is authorized to receive on behalf of this state all grants of money or other aid made available from any source to assist the state in carrying out the policy and purposes of this article. All such money or other aid,

together with any moneys appropriated or other provision made by this state for such purpose, shall be forthwith available to said department as the agency of the state subject, in the case of any funds or other aid received upon conditions, to the conditions upon which such funds or other aid has been received, for the purpose of administering this article and may be expended by the department in carrying out such state plans or in otherwise effectuating the purposes and policies of this article, but shall not be expended or disposed of for any other purposes, nor shall any funds made available to the department for purposes other than the administration of this article be expended or otherwise disposed of in connection with the administration of this article except in providing services and assistance in the administration of this article pursuant to the provisions of section 35-3-104 and in such case only to the extent that such funds are properly available for such purpose and subject in such cases to reimbursement of the funds so expended pursuant to the provisions of section 35-3-107.

(2) Subject to any conditions upon which any such money or other aid is made available to the state and to the terms of any applicable plan made effective pursuant to this article, such expenditures may include, but need not be limited to, expenditures for administrative expenses, equipment, cost of research and investigation, cost of educational activities, compensation and expenses of members of the state advisory committee, reimbursement to other state agencies or to voluntary committees or associations of agricultural producers for costs to such agencies, committees, or associations of assistance in the administration of this article, requested in writing by the department and rendered to the department, reimbursement of any other fund from which it has made expenditures in providing services in the administration of this article pursuant to the provisions of section 35-3-104, payments to agricultural producers provided for in any plan made effective pursuant to this article, salaries of employees, and all other expenditures requisite to carrying out the provisions and purposes of this article.

(3) The department shall provide for the keeping of full and accurate accounts as such state agency, separate from its accounts kept in its other capacities, showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under the provisions of this article and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this article.

Source: L. 37: p. 262, § 6. CSA: C. 5, § 66. CRS 53: § 6-3-6. C.R.S. 1963: § 6-3-6.

35-3-107. Powers and duties of state agency. (1) The department shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this article.

(2) The department has authority to make such rules and regulations, consistent with the provisions of this article, and to do any and all other acts consistent with the provisions of this article, which it finds to be necessary or proper for the effective administration of this article.

(3) The department has the authority to obtain, by lease or purchase, such equipment, office accommodations, facilities, services, and supplies, and to employ, pursuant to section 13 of article XII of the state constitution, such technical or legal experts or assistants and such other employees, including clerical and stenographic help, as it determines to be necessary or proper to carry out the provisions of this article, and to determine the qualifications, duties, and compensation of such experts, assistants, and other employees.

(4) All other agencies of this state are authorized to assist said department in carrying out the provisions of this article, upon written request of the department, in any manner determined by the department to be necessary or appropriate for the effective administration of this article.

Source: L. 37: p. 263, § 7. CSA: C. 5, § 67. CRS 53: § 6-3-7. C.R.S. 1963: § 6-3-7.

Cross references: For rule-making procedures, see article 4 of title 24; for the state personnel system, see § 13 of article XII of the state constitution.

35-3-108. Districts and communities. (1) The department shall designate within the state five agricultural districts. As far as practicable, such districts shall be so constituted as to contain approximately equal numbers of agricultural producers. Such districts shall include in the aggregate all of the land in the state.

(2) The department shall also designate within each county of this state such geographic units, which shall be called communities, as it determines to be the most convenient for the administration of this article and of state plans adopted pursuant to this article, and it shall establish the boundaries of such communities.

(3) The department may revise the boundaries of such agricultural districts and of such communities, in conformity with the respective standards prescribed in this article, at such times as it finds that such revision is necessary either to cause such districts or communities, or both, to conform to said standards or to provide for the more substantial or more efficient accomplishment of the purposes of this article.

Source: L. 37: p. 264, § 8. CSA: C. 5, § 68. CRS 53: § 6-3-8. C.R.S. 1963: § 6-3-8.

35-3-109. Community and county committees. (1) The department by regulations shall provide:

(a) For the organization within each community of a voluntary association, in which all agricultural producers who are citizens of this state and residents in such community shall be entitled to equal participation; for the selection by each such association of a community committee, composed of three members of such association; and for the selection of a chairman of each such community committee;

(b) For the selection by the members of such community committees within each county of a county committee for such county, composed of three members of such community committees, and for the selection of a chairman of each such county committee.

Source: L. 37: p. 265, § 9. CSA: C. 5, § 69. CRS 53: § 6-3-9. C.R.S. 1963: § 6-3-9.

35-3-110. State advisory committee - sunset review. (Repealed)

Source: L. 37: p. 266, § 10. CSA: C. 5, § 70. CRS 53: § 6-3-10. C.R.S. 1963: § 6-3-10. L. 86: (4) added, p. 425, § 57, effective March 26. L. 91: Entire section repealed, p. 885, § 9, effective June 5.

35-3-111. Reports - publications. The administrative officer within the department charged with administration of this article shall report to the commissioner at such times and on such matters as the commissioner may require. Publications made pursuant to this article and circulated in quantity outside the department are subject to the approval and control of the commissioner.

Source: L. 37: p. 266, § 11. CSA: C. 5, § 71. CRS 53: § 6-3-11. C.R.S. 1963: § 6-3-11. L. 64: p. 124, § 25.

ARTICLE 3.5

Nuisance Liability of Agricultural Operations

35-3.5-101.	Legislative declaration.	tural commission - attorney
35-3.5-102.	Agricultural operation deemed not nuisance - state agricul-	fees - exceptions.
	35-3.5-103.	Severability.

35-3.5-101. Legislative declaration. It is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly recognizes that, when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the state of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further recognized that units of local government may adopt ordinances or pass resolutions that provide additional protection for agricultural operations consistent with the interests of the affected agricultural community, without diminishing the rights of any real property interests.

Source: L. 81: Entire article added, p. 1694, § 1, effective July 1. **L. 96:** Entire section amended, p. 675, § 1, effective May 2.

35-3.5-102. Agricultural operation deemed not nuisance - state agricultural commission - attorney fees - exceptions. (1) (a) Except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

(b) An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production shall not be found to be a public or private nuisance as a result of any of the following activities or conditions:

- (I) Change in ownership;
- (II) Nonpermanent cessation or interruption of farming;
- (III) Participation in any government sponsored agricultural program;
- (IV) Employment of new technology; or
- (V) Change in the type of agricultural product produced.

(2) (a) Notwithstanding any other provision of this section to the contrary, an agricultural operation shall not be found to be a public or private nuisance if such agricultural operation:

(I) Was established prior to the commencement of the use of the area surrounding such agricultural operation for nonagricultural activities;

(II) Employs methods or practices that are commonly or reasonably associated with agricultural production; and

(III) Is not operating negligently.

(b) Employment of methods or practices that are commonly or reasonably associated with agricultural production shall create a rebuttable presumption that an agricultural operation is not operating negligently.

(3) The court may, pursuant to sections 13-16-122 and 13-17-102, C.R.S., award expert fees, reasonable court costs, and reasonable attorney fees to the prevailing party in any action brought to assert that an agricultural operation is a private or public nuisance. Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening in any way the provisions of sections 25-7-138 (5), C.R.S., and 25-8-501.1 (8), C.R.S.

(4) As used in this article, "agricultural operation" has the same meaning as "agriculture", as defined in section 35-1-102 (1).

(5) Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection (5) shall not apply when an agricultural operation is located within the corporate limits of any city or town on July 1, 1981, or is located on a property that the landowner voluntarily annexes to a municipality on or after July 1, 1981.

(6) This section shall not invalidate any contracts made prior to September 1, 2000, but shall be applicable only to contracts and agreements made on or after September 1, 2000.

(7) A local government may adopt an ordinance or pass a resolution that provides additional protection for agricultural operations; except that no such ordinance or resolution shall prevent an owner from selling his or her land or prevent or hinder the owner in seeking approval to put the land into alternative use.

Source: **L. 81:** Entire article added, p. 1694, § 1, effective July 1. **L. 96:** (5) added, p. 675, § 2, effective May 2. **L. 99:** (1) amended, p. 335, § 1, effective July 1. **L. 2000:** Entire section amended, p. 198, § 1, effective September 1.

ANNOTATION

The mere fact that an operator moves an agricultural sprinkler on a county road does not establish a public nuisance. Moreover, even if the use of the agricultural sprinkler constituted a public nuisance, the county is empowered only to abate the nuisance to the extent reasonably

necessary and, because of state policy in support of the use of implements of husbandry, an absolute prohibition on the movement of agricultural sprinklers on a county road is unreasonable. Bd. of County Comm'rs of Logan County v. Vandemoer, 205 P.3d 423 (Colo. App. 2008).

35-3.5-103. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: **L. 81:** Entire article added, p. 1695, § 1, effective July 1.

PEST AND WEED CONTROL

ARTICLE 4

Pest Control

35-4-101.	Short title.	35-4-110.	Quarantine and control of pests.
35-4-101.5.	Legislative declaration.	35-4-110.5.	Declaration of quarantine emergency.
35-4-102.	Definitions.	35-4-111.	Inspections - certificates - remedial measures.
35-4-103.	Administration.	35-4-112.	Right of entry.
35-4-104.	County pest inspectors.	35-4-113.	Authority of commissioner to enter into agreements.
35-4-105.	Compensation.	35-4-113.5.	Delegation of duties.
35-4-106.	County pest inspectors - examination of applicants.	35-4-114.	Penalties.
35-4-107.	Inspections - notice - treatment - collection of costs.	35-4-114.5.	Civil penalties.
35-4-108.	Unlawful to transport pests.	35-4-115.	Reports. (Repealed)
35-4-109.	Emergency disposal of plant material.	35-4-116.	Rules and regulations.

35-4-101. Short title. This article shall be known and may be cited as the "Pest Control Act".

Source: **L. 37:** p. 643, § 2. **CSA:** C. 80, § 44. **CRS 53:** § 6-10-1. **C.R.S. 1963:** § 6-10-1.

35-4-101.5. Legislative declaration. The general assembly hereby finds and declares that there is a need to prevent the introduction into Colorado and the dissemination within this state of plant pests through the movement of plant products and other plant material. This act provides for the regulation of the movement of plant products, materials, and pests in Colorado and establishes provisions under which such plant products and materials may legally enter or leave the state. This act also provides for the establishment of interstate and

intrastate quarantines to restrict the movement of plant products, materials, and pests. To this end, the commissioner of agriculture is hereby directed and authorized to control and prevent, by such means as shall be prescribed and provided by law, rule, or order of the commissioner, all contagious, infectious, and plant pests destructive to the state's agricultural, forestry, or horticultural interests or to the state's general environmental quality.

Source: L. 2007: Entire section added, p. 925, § 1, effective July 1.

35-4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board of county commissioners" means the public officials duly elected to that public office or their designated agents.

(2) "Commissioner" means the commissioner of agriculture or his designated agents.

(3) "County pest inspector" means any qualified employee of a board of county commissioners employed under this article.

(3.5) "Department" means the department of agriculture.

(4) "Insect pests" means any of the small invertebrate animals in the phylum arthropoda which are injurious to plants and animals.

(5) "Person" means any individual, partnership, association, corporation, or organized group of persons, whether incorporated or not.

(6) "Pests" means insect pests and animal pests, except rodents, jackrabbits, and predatory animals, and includes plant diseases and weeds. For purposes of section 35-4-107, the definition of pests shall not include weeds.

(7) "Plant diseases" means the pathological condition in plants caused by fungi, bacteria, viruses, nematodes, mycoplasmas, or parasitic seed plants.

(8) Repealed.

(9) "Weeds" means any noxious, destructive, or troublesome plant when found to be of sufficient economic importance to threaten the public welfare.

Source: L. 37: p. 643, § 1. CSA: C. 80, § 43. CRS 53: § 6-10-2. L. 56: p. 99, § 1. C.R.S. 1963: § 6-10-2. L. 78: Entire section amended, p. 455, § 1, effective April 27. L. 85: (3.5) and (9) added, (6) amended, and (8) repealed, pp. 1130, 1135, §§ 1, 15, effective May 16.

Cross references: For control of rodents, jackrabbits, and predatory animals, see article 7 of this title.

35-4-103. Administration. (1) The commissioner shall administer this article. A board of county commissioners shall concurrently administer this article and shall have full authority for the proper enforcement thereof by county pest inspectors employed by said board of county commissioners.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made, order issued, or quarantine declared pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made, order issued, or quarantine declared pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease immediately.

(b) At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted promptly and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to the commissioner indicating that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or rule, order, or quarantine, the commissioner may apply to any court of competent jurisdiction for an order to temporarily

or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule, quarantine, or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(4) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of a witness to obey a subpoena, the commissioner may petition the district court, and upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as a contempt of court.

Source: L. 37: p. 644, § 5. CSA: C. 80, § 47. CRS 53: § 6-10-3. C.R.S. 1963: § 6-10-3. L. 78: Entire section amended, p. 456, § 2, effective April 27. L. 85: Entire section amended, p. 1130, § 2, effective May 16. L. 96: Entire section amended, p. 320, § 1, effective April 16. L. 97: (3) amended, p. 24, § 1, effective March 20. L. 2007: (2)(a) and (3) amended, p. 925, § 2, effective July 1.

35-4-104. County pest inspectors. The persons who may be employed under this article, aside from employees of the department of agriculture, shall be county pest inspectors and their deputies, who shall be appointed by the board of county commissioners of the county where they are to serve and receive their pay. The board of county commissioners of any county when petitioned by not less than fifty landowners of the county shall appoint a county pest inspector at its next regular board meeting.

Source: L. 37: p. 644, § 6. CSA: C. 80, § 48. CRS 53: § 6-10-4. C.R.S. 1963: § 6-10-4.

Cross references: For appointment of county pest inspectors in pest control districts, see § 35-5-106.

35-4-105. Compensation. A county pest inspector shall receive such compensation as may be fixed by the board of county commissioners hiring such county pest inspector. The board of county commissioners shall provide for reimbursement of the county pest inspector for actual expenses incurred in carrying out the provisions of this article.

Source: L. 37: p. 644, § 7. CSA: C. 80, § 49. CRS 53: § 6-10-5. C.R.S. 1963: § 6-10-5. L. 78: Entire section R&RE, p. 456, § 3, effective April 27.

35-4-106. County pest inspectors - examination of applicants. It is the duty of a board of county commissioners to examine all applicants for the positions of county pest inspectors, and, if found competent and fully qualified to perform the duties of the office, the board shall issue to such applicants a license as county pest inspector. No person shall act as county pest inspector unless he holds such license, which shall certify to the competency of the applicant and shall authorize him to act as county pest inspector for a period of two years.

Source: L. 37: p. 645, § 8. CSA: C. 80, § 50. CRS 53: § 6-10-6. C.R.S. 1963: § 6-10-6. L. 78: Entire section amended, p. 456, § 4, effective April 27. L. 85: Entire section amended, p. 1131, § 3, effective May 16.

ANNOTATION

Court may not substitute its judgment for that of department concerning the qualifications of county pest inspectors, nor interfere with its discretion in determining the qualifications of an appointee to such position. *Gillette v. People ex rel. Rice*, 86 Colo. 185, 279 P. 40 (1929).

But mandamus will lie to compel issuance of license arbitrarily withheld. If an appointee is, in the opinion of the department, competent and qualified to perform the duties of the office, and a license is arbitrarily withheld, mandamus will lie to compel its issuance. *Gillette v. People ex rel. Rice*, 86 Colo. 185, 279 P. 40 (1929).

35-4-107. Inspections - notice - treatment - collection of costs. (1) (a) The county pest inspector shall have the right to enter upon any public or private property during reasonable business hours to inspect for pest infestations or infection and ensure compliance with the requirements of this article and any local requirements when at least one of the following has occurred:

- (I) The landowner or occupant has requested an inspection;
- (II) A neighboring landowner or occupant has reported a suspected pest infestation or infection and requested an inspection; or
- (III) An authorized agent of the county in which the property is situated has made a visual observation from a public right-of-way or area and has reason to believe that a pest infestation or infection exists.

(b) No entry upon any property shall be permitted until the landowner or occupant has been sent a notification by certified mail to the landowner's or occupant's last-known address that such entry is pending. When possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(c) If, after receiving notice that an inspection is pending, the landowner or occupant denies access to the county pest inspector, the board of county commissioners may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the board of county commissioners, through its agent or employee, of an affidavit that provides a specific description of the location of the affected land and sets forth information that gives the county pest inspector probable cause to believe that a provision of this article is being or has been violated and the landowner or occupant has denied access to the county pest inspector. No landowner or occupant shall deny access to such land when presented with an inspection warrant.

(d) The county pest inspector shall have the authority to notify and advise the landowner or occupant in writing by certified mail of the findings of the inspection. If such findings indicate a pest infestation or infection, such notice shall name the pest, advise the landowner or occupant to manage the pest, and specify the available control methods of integrated pest management, including mechanical, chemical, and biological methods. Such notice shall inform the landowner or occupant that the state forester or county extension office may be consulted concerning integrated pest management. Where possible, the county pest inspector shall consult with such landowner or occupant in the development of a plan for the management of pest infestations and infections on the premises or lands.

(e) Within ten days after receipt of notification of a pest infestation or infection, the landowner or occupant:

- (I) Shall comply with the terms of the notification;
- (II) Shall acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of a plan for compliance; or

(III) If the landowner or occupant disputes the finding of infestation or infection by the county pest inspector, may request a hearing before the board of county commissioners or a panel appointed by the board. Any owner requesting such a hearing shall not be required to take action to control pests pending the outcome of the hearing. The board of county commissioners conducting the hearing shall order appropriate relief if it finds there is infestation or infection as alleged in the written notice. Any relief ordered pursuant to this article shall be at the expense of the owner, but the cost to the owner or owners of any one parcel, including parcels contiguous thereto, shall not exceed five thousand dollars annually.

(2) When necessary to enforce the provisions of this article, a county pest inspector, after notice of pest infestation or infection to the owner pursuant to subsection (1) of this section, shall treat to control the pests on plant host material, buildings, or other property. Such treatment shall not be commenced by a county pest inspector pending the outcome of any hearing requested pursuant to subsection (1) of this section. Upon the completion of such work, a statement of the cost and expense thereof along with a description of the property upon which such work was done shall be filed with the board of county commissioners, who shall pay same without unnecessary delay.

(3) Upon payment by the board of county commissioners of any cost and expense of treating pest infestation or infection pursuant to subsection (2) of this section, it shall make demand in writing upon such owner, in person or by mail addressed to such owner at his or her last-known place of residence, for reimbursement to the county for the amount of the county's direct costs and expenses only. No such written demand for reimbursement of pest infestation or infection costs and expenses shall be in excess of five thousand dollars annually. Such written notice shall inform such owner of the right to appear before the board of county commissioners at any meeting thereof, as fixed by law, to be held within the following four months, and be heard as to the amount of such claims. If the claim, as originally demanded by the board or as adjusted upon such hearing, is not paid at the end of such period, the board shall certify such claim to the county treasurer of the county in which the property is located. The county treasurer shall add the amount of the claim to any taxes due, or to become due, from the owner, and, if not paid in due course, the same shall be collected by the county treasurer as delinquent taxes. The board of county commissioners shall work with any landowner to develop a payment schedule for the cost of an assessment for pest treatment upon a demonstration by such landowner of an economic hardship. All such accounts when collected shall be paid into the general fund of the county.

(4) If the board of county commissioners finds that a pest infestation or infection is a result of or can be attributed to an infestation or infection on land owned by any federal, state, or local governmental unit that has not been treated or is not under control, the landowner shall not be charged for any relief ordered pursuant to this section.

Source: L. 37: p. 645, § 9. CSA: C. 80, § 51. CRS 53: § 6-10-7. C.R.S. 1963: § 6-10-7. L. 78: Entire section amended, p. 457, § 5, effective April 27. L. 85: (1) and (2) amended, p. 1131, § 4, effective May 16. L. 99: Entire section amended, p. 281, § 1, effective April 13.

Cross references: For spraying land adjacent to highways infested with insects or on which weed destruction is desired, see § 43-2-207; for the "Pesticide Applicators' Act", see article 10 of this title; for collection of taxes, see article 10 of title 39; for the effect of the "Colorado Agricultural Marketing Act of 1939" on this article, see § 35-28-123.

35-4-108. Unlawful to transport pests. (1) It is unlawful for any person, by any means whatsoever, to knowingly transport, into or in Colorado, live pests or host material which may be injurious to agriculture or horticulture in this state, without permission from the commissioner.

(2) The commissioner may issue and enforce a hold order against any person who owns or controls any nursery stock, agricultural crop, or other plant material that is suspected of harboring a plant pest or disease, for the purpose of isolating the material, restricting its movement, and specifying appropriate sanitary measures pending completion of testing to confirm the presence of such pest or disease.

Source: L. 37: p. 647, § 10. CSA: C. 80, § 52. CRS 53: § 6-10-8. C.R.S. 1963: § 6-10-8. L. 85: Entire section amended, p. 1132, § 5, effective May 16. L. 2007: Entire section amended, p. 926, § 3, effective July 1.

35-4-109. Emergency disposal of plant material. Any shipment of any plant material into Colorado when found to be in violation of a quarantine declared pursuant to section 35-4-110 or when found to carry exotic pests not previously found in the United States or

pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state by the commissioner may be placed in isolation or quarantine by the commissioner and shall be completely under the commissioner's control. The owner or bailee shall comply with all terms of the quarantine, abate such pests as directed by and to the satisfaction of the commissioner or remove such shipment from the state within such time as ordered by the commissioner. Articles not removed from the state as ordered shall be destroyed by the commissioner with no recompense therefor to the owner. Any owner or bailee claiming that his or her shipment of plant material was destroyed or ordered removed from the state without reasonable justification may request a hearing on that issue before the commissioner within ten days after such destruction or order of removal. If it is determined that a shipment of plant material was destroyed or ordered removed from the state by the commissioner without reasonable justification and that such action was done arbitrarily and capriciously, the department of agriculture shall reimburse such owner or bailee for any losses suffered.

Source: L. 37: p. 647, § 11. CSA: C. 80, § 53. CRS 53: § 6-10-9. C.R.S. 1963: § 6-10-9. L. 78: Entire section amended, p. 458, § 6, effective April 27. L. 85: Entire section amended, p. 1132, § 6, effective May 16. L. 96: Entire section amended, p. 321, § 2, effective April 16.

35-4-110. Quarantine and control of pests. (1) Whenever the commissioner finds any portion of the state to be affected with exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state and in the commissioner's judgment plants or plant parts, whether living or dead, domestic animals, or other objects from the district affected would be liable to spread the pests into other sections of the state to the injury of others, the commissioner, after a hearing conducted pursuant to section 24-4-103, C.R.S., may declare a quarantine against such section or portion of the state to prevent the transfer of carriers of such pests from the quarantined area.

(2) Whenever it is ascertained that exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state are likely to be introduced into Colorado by the importation of plants or plant parts, whether living or dead, domestic animals, or other objects, the commissioner, after a hearing conducted pursuant to section 24-4-103, C.R.S., may declare a quarantine against the importation into Colorado of such pest carriers.

(3) The commissioner is authorized, pursuant to the provisions of this article, to apply such control or eradication measures as may be necessary to prevent the migration of exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside the state, or pests known to have caused high levels of economic damage in the past within this state that threaten to become established in this state and that endanger agricultural or horticultural industries in this state. The actual costs to offset the cash funds expended for services performed by the commissioner in imposing the quarantine and such control or eradication measures shall be recovered from the producers of any crop protected by such quarantine pursuant to rules promulgated by the commissioner. If the governor declares an emergency pursuant to section 35-4-110.5, the commissioner's costs may be recovered from the disaster emergency fund, created in section 24-32-2106, C.R.S. The commissioner is authorized to accept assistance, services, facilities, and grants tendered by federal or local governmental units or other persons.

Source: L. 37: p. 647, § 12. CSA: C. 80, § 54. CRS 53: § 6-10-10. C.R.S. 1963: § 6-10-10. L. 85: Entire section amended, p. 1132, § 7, effective May 16. L. 96: Entire section amended, p. 321, § 3, effective April 16. L. 2007: (3) amended, p. 926, § 4, effective July 1.

35-4-110.5. Declaration of quarantine emergency. (1) The commissioner shall notify the governor of the necessity for declaring a quarantine emergency if all of the following conditions are met:

(a) The commissioner has declared a quarantine pursuant to section 35-4-110 (1) or (2) or both.

(b) The commissioner has determined that the pest which is the subject of the quarantine is being or may be spread.

(c) The commissioner has determined that the pest poses a serious threat of economic harm to any segment of the agricultural or horticultural industry of this state.

(2) Upon being so notified by the commissioner, the governor may declare a state of quarantine emergency to be in effect. Such state of emergency shall be in effect for no more than one hundred eighty days and may be renewed for successive periods of no more than one hundred eighty days upon certification by the commissioner to the governor that the threat from the pest continues to exist and continues to justify the emergency enforcement measures.

(3) When the governor declares a quarantine emergency, the governor is authorized to accept assistance, services, facilities, and grants tendered by federal and local governmental units or other persons.

(4) (Deleted by amendment, L. 96, p. 321, § 4, effective April 16, 1996.)

Source: L. 85: Entire section added, p. 1134, § 8, effective May 16. L. 96: (2), (3), and (4) amended, p. 321, § 4, effective April 16.

35-4-111. Inspections - certificates - remedial measures. (1) Should any owner or bailee request an inspection of crops, plant material, or other articles or premises for pests, the commissioner shall provide such inspection and issue a certificate setting forth the facts of said inspection and shall charge the owner or bailee adequate fees to cover the cost of such inspections and certificates. The commissioner has authority to impound and prohibit movement, sale, or disposal of such crops, plant material, or other articles until such fees are paid. The release of such crops, plant material, or other articles shall also be dependent on meeting all inspection requirements.

(2) The commissioner may conduct inspections and issue phytosanitary and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country. The commissioner may collect inspection and certification fees, in an amount established by the agricultural commission, to cover the direct and indirect costs of providing such services. All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the phytosanitary inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(3) The commission may enter into compliance agreements with producers and distributors of nursery stock, agricultural crops, and other plant materials for the purpose of certifying such plant materials as pest-free for export certification. At any time after entering into such an agreement, if the commissioner has reason to believe that the producer or distributor of the plant material that is the subject of the agreement has failed to comply with all of the terms of the agreement, the commissioner may terminate the agreement by giving the producer or distributor written notice of such termination and the grounds therefor.

Source: L. 37: p. 648, § 13. CSA: C. 80, § 55. CRS 53: § 6-10-11. C.R.S. 1963: § 6-10-11. L. 78: Entire section amended, p. 459, § 7, effective April 27. L. 85: Entire section amended, p. 1134, § 9, effective May 16. L. 2007: Entire section amended, p. 927, § 5, effective July 1. L. 2009: (2) amended, (HB 09-1249), ch. 87, p. 315, § 3, effective July 1.

35-4-112. Right of entry. Except as provided in section 35-4-107, the commissioner and any authorized agent thereof and county pest inspectors employed under this article, together with such help as they may need in the prosecution of their work, are authorized upon consent or upon obtaining an administrative search warrant, during reasonable business hours, to enter upon or into any premises, land, buildings, or other places of business for the purpose of carrying out the provisions of this article.

Source: L. 37: p. 649, § 16. CSA: C. 80, § 58. CRS 53: § 6-10-12. C.R.S. 1963: § 6-10-12. L. 78: Entire section amended, p. 459, § 8, effective April 27. L. 85: Entire section amended, p. 1134, § 10, effective May 16. L. 96: Entire section amended, p. 322, § 5, effective April 16.

35-4-113. Authority of commissioner to enter into agreements. (1) The commissioner may enter into agreements with other agencies of this state or of other states or any agency of the federal government and delegate authority to representatives thereof when such agencies or representatives may assist in carrying out the provisions of this article.

(2) The commissioner may enter into agreements with any agency of the federal government for the purposes of inspecting sites and plants and monitoring compliance with post-entry quarantine as required by the federal "Plant Protection Act", 7 U.S.C. sec. 7712, as amended, and the rules promulgated pursuant thereto. The actual costs to offset the cash funds expended by the commissioner pursuant to such agreement, including, but not limited to, promulgating any rules necessary for the administration and enforcement of such agreement and conducting inspections of sites and plants shall be recovered from the persons who have signed post-entry quarantine growing agreements covering the sites where the articles are grown or, if no such agreement exists, from the owners of the articles at the growing sites.

(3) The commissioner may enter into cooperative agreements with any other state or federal agency for the purpose of conducting inspections and issuing phytosanitary certificates pursuant to section 35-4-111.

Source: L. 37: p. 649, § 17. CSA: C. 80, § 59. CRS 53: § 6-10-13. C.R.S. 1963: § 6-10-13. L. 78: Entire section amended, p. 459, § 9, effective April 27. L. 85: Entire section amended, p. 1135, § 11, effective May 16. L. 96: Entire section amended, p. 322, § 6, effective April 16. L. 2007: (2) amended and (3) added, p. 927, § 6, effective July 1.

35-4-113.5. Delegation of duties. The commissioner, in his discretion, may delegate his authority to an employee to execute the provisions of this article.

Source: L. 85: Entire section added, p. 1135, § 12, effective May 16.

35-4-114. Penalties. Except for sections 35-4-107 and 35-4-110.5, any person who violates any of the provisions of this article commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The commissioner or a board of county commissioners may refer such cases to the district attorney of the county in which such violation is alleged to have occurred for such action as may be deemed necessary. The conviction of a violation of any of the provisions of this article shall be cause for revocation of any certificate, permit, or appointment issued under this article.

Source: L. 37: p. 649, § 18. CSA: C. 80, § 60. CRS 53: § 6-10-14. C.R.S. 1963: § 6-10-14. L. 78: Entire section R&RE, p. 460, § 10, effective April 27. L. 85: Entire section amended, p. 1135, § 13, effective May 16.

Cross references: For certificates issued by the department of agriculture pursuant to this article, see § 35-4-111.

35-4-114.5. Civil penalties. (1) Any person who violates any provision of this article or any rule or quarantine declared pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit in any court of competent jurisdiction to recover such amount plus costs and attorney fees.

(4) Before imposing any civil penalty, the commissioner may consider the financial hardship such penalty may cause to the business of the person charged.

(5) Any civil penalty recovered pursuant to this section shall be credited to the general fund.

Source: L. 96: Entire section added, p. 322, § 7, effective April 16.

35-4-115. Reports. (Repealed)

Source: L. 37: p. 650, § 19. **CSA: C. 80,** § 61. **CRS 53:** § 6-10-15. **C.R.S. 1963:** § 6-10-15. **L. 78:** Entire section repealed, p. 460, § 11, effective April 27.

35-4-116. Rules and regulations. The commissioner may promulgate such rules and regulations as he deems necessary for the administration and enforcement of this article. Such rules and regulations shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 85: Entire section added, p. 1135, § 14, effective May 16.

ARTICLE 4.5

Pest Control Compact

35-4.5-101. Pest control compact.

35-4.5-102. When compact effective.

35-4.5-101. Pest control compact. (1) The general assembly hereby approves the pest control compact, which is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every

state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V (e) of this Compact.

Article III

The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

- i. Assist in the coordination of activities pursuant to the Compact in his state; and
- ii. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the

expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

i. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.

ii. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

i. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.

ii. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

iii. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

iv. Proof that the expenditures being made or budgeted as detailed in item iii do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item iii constitutes a normal level of pest control activity.

v. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

vi. Such other information as the Governing Board may require consistent with the provisions of this Compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish

information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata

basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this Compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

(1) This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

(2) Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

(3) Pursuant to Article IV (h) of the Compact, copies of bylaws and amendments thereto shall be filed with the commissioner of agriculture.

(4) The Compact administrator for this state shall be the commissioner of agriculture appointed by the Governor. The duties of the Compact administrator shall be deemed a regular part of the duties of this office.

(5) Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the commissioner of agriculture

whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

(6) The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account, in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

(7) As used in this Compact, with reference to this state, the term "executive head" shall mean the Governor.

Source: L. 2007: Entire article added, p. 928, § 7, effective July 1.

35-4.5-102. When compact effective. This article and the compact contained herein shall take effect on July 1, 2007.

Source: L. 2007: Entire article added, p. 937, § 7, effective July 1.

ARTICLE 5

Pest Control Districts

35-5-101.	Definitions.	35-5-112.	Pest control district on public lands - notice - charges.
35-5-102.	Duty to control weeds.	35-5-113.	Deputy or agent may exercise power.
35-5-103.	Methods of control - rules and regulations.	35-5-114.	Liberal construction.
35-5-104.	Pest control district - procedure to establish.	35-5-115.	Dissolution of district.
35-5-105.	Advisory committee.	35-5-116.	Major grasshopper and range caterpillar infestations.
35-5-106.	Pest inspector, deputies, and employees.	35-5-117.	Emergency measures.
35-5-107.	Duties of pest inspector.	35-5-118.	Right of entry.
35-5-108.	Control or eradication methods and procedures - notice - assessments - protests.	35-5-119.	Procedure for establishing grasshopper and range caterpillar control districts. (Repealed)
35-5-109.	Owner or lessee refuses action.	35-5-120.	Grasshopper and range caterpillar control.
35-5-110.	Public nuisance - abatement.	35-5-121.	Immunity.
35-5-111.	Reports of acreage infested - county tax levy - fund - allocation.	35-5-122.	Costs of control operations.
		35-5-123.	Rules and regulations.
		35-5-124.	No weed districts. (Repealed)
		35-5-125.	Cooperation between districts.

35-5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "APHIS" means the United States department of agriculture animal and plant health inspection, plant protection, and quarantine programs.

(1.5) "Commissioner" means the commissioner of agriculture.

(2) "County" includes a city and county.

(3) "District" means an area as provided for in section 35-5-104.

(4) "District advisory committee" means the committee appointed as provided in section 35-5-105.

(5) "Insect pest", as determined by the commissioner, means any of the small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, and which, upon investigation by the commissioner, are found to be in epidemic proportions.

(6) "Inspector" means a county pest inspector.

(7) "Landowner" means a person who owns five or more acres of land within the boundaries of the proposed district.

(7.1) "Lessee" means a person leasing five or more acres of state-owned land con-

trolled by the state board of land commissioners within the boundaries of the proposed district.

(8) "Noxious weeds", as determined by the commissioner, means those weeds which are especially troublesome and detrimental and which may cause damage or loss to a considerable portion of the land or livestock of a community.

(9) "Person" includes person, firm, corporation, or association.

(10) "Pest", as determined by the commissioner, means a noxious, destructive, or troublesome plant, insect, or plant disease, when found to be in epidemic proportions and of sufficient economic importance to threaten the public welfare.

(11) "Plant diseases", as determined by the commissioner, means injurious action caused by the continuous or intermittent damage of all plants by any causal agent and expressed through symptoms.

(12) "Resident landowner" means a person who owns five or more acres of land within the boundaries of the proposed district and has his legal residence within the county where the proposed district is located or within an adjacent county.

(12.1) "Resident lessee" means a person leasing five or more acres of state-owned land controlled by the state board of land commissioners within the boundaries of the proposed district and having his legal residence within the county where the proposed district is located or within an adjacent county.

Source: L. 59: p. 176, § 1. CRS 53: § 6-16-1. C.R.S. 1963: § 6-5-1. L. 77: (1) and (1.5) R&RE and (7.1) and (12.1) added, p. 1577, §§ 1, 2, effective June 4.

35-5-102. Duty to control weeds. It is the duty of all persons owning land or any interest therein in the district, the department of transportation, the boards of county commissioners, school boards, the governing authorities of incorporated towns and cities and of railroads and ditch companies, and those persons supervising state-owned lands to use reasonable means to control the noxious weeds if the same are likely to be materially damaging to the land of neighboring landowners.

Source: L. 59: p. 177, § 2. CRS 53: § 6-16-2. C.R.S. 1963: § 6-5-2. L. 83: Entire section amended, p. 1311, § 1, effective May 10. L. 91: Entire section amended, p. 1074, § 56, effective July 1.

35-5-103. Methods of control - rules and regulations. The commissioner is empowered to designate the methods to be used for the control or eradication of the various noxious weeds, insect pests, and plant diseases and to publish such methods and make and publish such reasonable rules and regulations as are proper and necessary to carry into effect the provisions of this article. The commissioner is authorized to enter into agreements with any landowner, lessee, district, city, or town, or with federal, state, or county agencies for cooperation and for cost-sharing in the control and eradication of noxious weeds, insect pests, or plant diseases located upon land that they control or administer within the district in keeping with the provisions of this article. The commissioner, with the approval of the governor, is authorized to advance funds, which may be appropriated for this purpose subject to reimbursement, to carry into effect the provisions of this article.

Source: L. 59: p. 177, § 3. CRS 53: § 6-16-3. C.R.S. 1963: § 6-5-3. L. 83: Entire section amended, p. 1311, § 2, effective May 10.

Cross references: For rule-making procedures, see article 4 of title 24; for intergovernmental relationships, see part 2 of article 1 of title 29.

35-5-104. Pest control district - procedure to establish. (1) Whenever twenty-five percent of the resident landowners and resident lessees within a contiguous territory desire to form a pest control district, as defined in this subsection (1), they may file a petition for that purpose with the board of county commissioners of the county in which the land is

located. Such petition shall be addressed to the board of county commissioners of such county, and shall contain a description of the boundaries of the proposed district and a description of the land of each person signing such petition, and shall state that the said proposed district has been invaded, or is in danger of being invaded, by noxious weeds, insect pests, or plant diseases injurious to agricultural crops, trees, fruits, or pasture, and shall name the specific pests or diseases against which said petitioners desire to be protected, and shall state the termination date of the proposed district. Such petition shall be signed by each resident landowner and resident lessee joining in the petition by his proper signature, together with his address, and the date of the petition shall be the date of its filing in the office of the board of county commissioners. Any petitioner may revoke and cancel his signature to such petition at any time before said petition is filed, but not after such filing has been made.

(2) Such petition shall be filed with the board of county commissioners during a regular or special session of the board, and shall be verified under oath by at least one of the persons signing it, setting forth that the said petition was signed within ninety days last preceding the making of said verification, and that all matters and things stated in said petition are true to the best of the knowledge and belief of the affiant, and that all signers have had an opportunity to read said petition.

(3) After examination of the petition, if the board of county commissioners finds the petition in order and properly signed by twenty-five percent of the resident landowners and resident lessees within the proposed district, the board shall, within fifteen days after receipt of the petition, mail ballots to all landowners and lessees in the proposed district, to the addresses as shown by the records of the county assessor or state board of land commissioners, stating that said ballots are to be returned to the board's office within ten days from date of mailing. If, after a tally of the votes has been made, the board finds that sixty-six and two-thirds percent of the landowners and lessees voting have voted in favor of the district, and the landowners and lessees voting own or lease fifty percent of the land in the proposed district, the board shall declare the district established. Acreage owned by the federal government or acreage owned by the state government not subject to a lease shall not be considered in determining the percentage of land voted.

(4) Such petition may, in addition to the matters set forth in this section, request the board of county commissioners to take charge of and supervise the work in connection with the control or eradication of the pests named. The board, if a pest control district is created upon the petition in accordance with this article, shall proceed during the existence of said district, through the county pest inspector, to control or destroy such pests at the times and in the manner and by the aid of such means and additional help as the commissioner and county pest inspector recommend, and the board may enter into contracts to have the necessary work done in the district where noxious weeds, insect pests, or plant diseases occur in epidemic proportion. Such contracts shall be let through competitive bidding, and the board may pay for the work and materials expended. Said contracts may be let for periods not to exceed one year and may be renewed if necessary. The board of county commissioners also may enter into contracts with landowners and lessees in which the landowners and lessees are obligated for their share of the total cost of control operations.

(5) If the owner or lessee of any lands adjoining an established pest control district desires to have such lands included within the district, he may petition the board of county commissioners of the county in which the district is located and to which district annexation of his land is desired. The petition shall contain a description of the boundaries of the lands so desired to be annexed and shall be signed by the petitioner. The board shall act on said petition within ten days after the receipt thereof. If the board finds that the petition is in order, that the boundaries of the lands described in the petition are accurate, that the lands adjoin the established district, and that the petition is properly signed, it shall, by order, declare that the lands petitioned to be annexed to the district shall be included as a part of the district. Within ten days after such action upon the petition, the board shall notify the petitioner, the county assessor, the district advisory committee of the district in which such lands are to be included, and the department of agriculture of its action. Two or more owners and lessees of lands adjoining an established pest control district may join in and sign a

single petition for annexation of their adjoining lands to an established district in the manner prescribed in this subsection (5).

(6) The district advisory committees of two or more adjoining pest control districts may petition the board of county commissioners of the county in which such districts are located, requesting the consolidation of such districts. The board shall schedule a public hearing on the petition within ten days after the receipt thereof. The public hearing shall be held within thirty days after receipt of the petition. If, after such hearing, the board determines that through such consolidation the districts could be more economically and efficiently operated, the board shall immediately, by order, declare the dissolution of the districts to be consolidated and the establishment of the consolidated new district, and shall thereupon notify the county assessor and district advisory committees of the dissolved districts of the termination of their respective committees, and shall appoint a new five-member district advisory committee for the consolidated district.

(7) When a pest control district which was established for the control and eradication of specified pests desires to extend the termination date of the district, the district advisory committee shall petition the board of county commissioners of the county in which such district is located, requesting the extension of the termination date. Upon receipt of said petition, the board of county commissioners shall set a date for a hearing on the matter and shall publish notice thereof in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. If, after notice and hearing, the board of county commissioners determines that such extension of the termination date is advisable and is needed for adequate pest control in the district, the board of county commissioners shall immediately declare the extension of the termination date and shall so inform the district advisory committee, the county assessor, and the state board of land commissioners.

(8) When a pest control district which was established for the control and eradication of specified pests desires to add additional pests to be controlled within the district, the district advisory committee shall petition the board of county commissioners of the county in which such district is located, requesting that a stipulated pest or pests should be added to the pests to be controlled in the district. The board of county commissioners shall act on the petition within ten days after receipt thereof. If the board of county commissioners determines that such pests should be controlled within the district, said board shall submit the question to all landowners and lessees of the district by causing to be mailed to each landowner and lessee, to the address as shown by the records of the county assessor or state board of land commissioners, a ballot requesting his vote for or against the addition of the stipulated pests to be controlled within the district and the return of such ballot within ten days to the board. If fifty-one percent of the landowners and lessees voting in the district vote in favor of the inclusion of said pests within those to be controlled, the board shall immediately declare that the stipulated pests shall be controlled within the district and shall so inform the district advisory committee.

Source: L. 59: p. 178, § 4. CRS 53: § 6-16-4. L. 61: p. 155, §§ 1, 2. L. 63: p. 160, § 1. C.R.S. 1963: § 6-5-4. L. 75: (7) amended, p. 1340, § 1, effective May 31. L. 83: (1) and (3) to (8) amended, p. 1312, § 3, effective May 10. L. 2000: (6) amended, p. 5, § 1, effective August 2.

35-5-105. Advisory committee. After the formation of a pest control district and before any weed or pest control program has been initiated by the county pest inspector, the board of county commissioners shall appoint an advisory committee of five or more members, who shall serve at the pleasure of the board of county commissioners. Should a vacancy occur, the board of county commissioners shall fill the vacancy by appointment within thirty days. The committee members may be resident landowners or resident lessees and, insofar as is practical, shall have a practical knowledge of weed and pest control and shall geographically represent the district.

Source: L. 59: p. 179, § 5. CRS 53: § 6-16-5. C.R.S. 1963: § 6-5-5. L. 65: p. 178, § 1. L. 83: Entire section amended, p. 1314, § 4, effective May 10.

35-5-106. Pest inspector, deputies, and employees. The board of county commissioners of the county concerned may appoint a qualified person, subject to the approval of the commissioner and district advisory committee, as county pest inspector. It is the duty of said inspector to carry out his duties as provided in this article under the direction of the board and the commissioner. The inspector, with the approval of the board, may employ such deputies and employees as are necessary to perform his duties under this article. The salary of the inspector and of his deputies and employees shall be determined by the board.

Source: L. 59: p. 179, § 6. CRS 53: § 6-16-6. C.R.S. 1963: § 6-5-6.

Cross references: For appointment of county pest inspectors, see § 35-4-104.

35-5-107. Duties of pest inspector. (1) The inspector shall cooperate with the commissioner in locating infestations of noxious weeds, insect pests, or plant diseases; make an annual report of known infestations of noxious weeds, insect pests, or plant diseases and compile data on areas controlled, eradicated, or under treatment; submit reports thereon to the commissioner, the district advisory committee, and the board of county commissioners by December 1 of each year; consult with the commissioner and the extension service and advise upon all matters pertaining to the best and most practical methods of noxious weed, insect pest, or plant disease control and eradication; and render every possible assistance to obtain the most effective control or eradication of noxious weeds, insect pests, or plant diseases within the district.

(2) The commissioner or the inspector, or their deputies, having jurisdiction, together with such assistants as they may need in the prosecution of their work, are authorized during reasonable business hours to enter upon or into any premises, lands, or places within any pest control district in this state where they may suspect that pests occur which may be determined by the commissioner to be injurious to the welfare of the community for the purpose of inspecting, controlling, or eradicating the same or otherwise carrying out the provisions of this article.

Source: L. 59: p. 179, § 7. CRS 53: § 6-16-7. C.R.S. 1963: § 6-5-7.

35-5-108. Control or eradication methods and procedures - notice - assessments - protests. (1) The county pest inspector shall give notice by radio, newspaper, or any other means of communication to the owner, lessee, agent, or occupant of any lands within a district on which noxious weeds, insect pests, or plant diseases are found, advising them of their presence and naming the noxious weed, insect pest, or plant disease, giving both common and scientific names. Such notice shall specify the best available methods of controlling or eradicating such noxious weeds, insect pests, or plant diseases and shall require that such methods be used for control or eradication thereof. Failure to receive such notice shall not constitute a defense to the assessment of a lien against the property, as provided in this section, for the expense for the control or eradication of such pests.

(2) In case any such landowner, lessee, agent, or occupant refuses to comply with the requirements of the county pest inspector for the control or eradication of such noxious weeds, insect pests, or plant diseases, or causes the same to be done, it is the duty of the inspector to provide access to sprayers or other equipment needed and to enter upon such lands with the approval of the board of county commissioners and, as provided in this article, to effect the control or eradication of such noxious weeds, insect pests, or plant diseases.

(3) Upon completion of the work, the board of county commissioners shall notify or cause to be notified said landowner, by certified mail, at the address shown on the records of the county assessor, or by one publication in a newspaper having general circulation within the county, as to the amount due, furnishing an itemized statement of the expense of the treatment of such noxious weeds, insect pests, or plant diseases (the amount paid the inspector shall not be included), and stating that, if the amount of said statement is not paid to the county treasurer of the county wherein the real estate is located within thirty days

from the date of said notice, the amount thereof will be assessed as a lien upon said real estate, but no lien shall be in excess of the valuation for assessment of said real estate.

(4) If any landowner within the district is dissatisfied with the itemized statement of expense, he may, within thirty days from the mailing or publication of the account showing such charge, file a written protest with the board of county commissioners. Not later than ten days after the filing of such protest, the board of county commissioners shall fix a time and place for hearing on the protest filed, to be held not less than ten days nor more than thirty days from the date of notice of the hearing, and immediately after such hearing the board of county commissioners shall make written findings and such changes in the assessment as may be determined to conform with such findings.

(5) A copy of said final statement of expenses shall be filed with the county assessor. If the amount of the statement is not paid within thirty days of said notice or if a protest is filed, within thirty days after the findings or determination of such protest, the county assessor shall extend the amount upon the assessment rolls, and said assessment shall thereon become a part of the general taxes and constitute a lien against the entire contiguous tract owned by such person of which the portion so treated is all or a part. The assessment shall thereafter become due in the same manner and be collected in the same manner as the general ad valorem property tax; but not more than five percent of the total valuation for assessment of the entire contiguous tract of land of which the portion so treated is all or a part shall be spread on the tax rolls against said land in any one year. Any amount in excess of the five percent limitation and remaining unpaid may be carried over and charged on the tax roll of the succeeding years, and any unpaid balance so carried over shall bear interest at the rate of six percent per annum until paid. All of the provisions of the general laws for the enforcement of the collection of taxes shall be applicable thereto after the extension by the county assessor. Such assessments may be paid in full at any time before general taxes become due and payable.

(6) (a) Upon completion of the work, the board of county commissioners shall notify or cause to be notified said lessee, by certified mail, at the address shown on the records of the state board of land commissioners, or by one publication in a newspaper having general circulation within the county, of the amount due, furnishing an itemized statement of the expense of the treatment of such noxious weeds, insect pests, or plant diseases (the amount paid the inspector shall not be included), and stating that, if the amount of said statement is not paid to the county treasurer of the county wherein the leased property is located within thirty days from the date of said notice, the amount thereof will be assessed as a lien upon any improvements located upon the leased property and owned by the lessee. The county shall institute civil proceedings in a court of competent jurisdiction to recover the amount of the assessment. In the event the value of said improvements is less than the amount of the assessment, the county may recover the difference by execution on such personal property of the lessee that is not exempt, as provided by law.

(b) If any lessee within the district is dissatisfied with the itemized statement of expense, he may file a written protest with the board of county commissioners as provided by subsection (4) of this section.

(c) A copy of the final statement of expense shall be filed with the county assessor. If the amount of the statement is not paid within thirty days of said notice or if a protest is filed, within thirty days after the findings or determination of such protest, the county assessor shall extend the amount upon the assessment rolls, and said assessment shall thereon become a part of the general taxes and constitute a lien against any improvements located upon the tract and owned by the lessee. If a judgment in favor of the county is not satisfied as the result of execution on the property, the county shall seek to satisfy the judgment by levying upon any personal property held by the lessee which is not exempt, as provided by law.

Source: L. 59: p. 180, § 8. CRS 53: § 6-16-8. C.R.S. 1963: § 6-5-8. L. 83: (1) and (2) amended and (6) added, p. 1314, § 5, effective May 10.

Cross references: For collection of ad valorem taxes, see article 10 of title 39.

35-5-109. Owner or lessee refuses action. When noxious weeds, insect pests, or plant diseases are found on a property not listed on the tax rolls of the county and the owner or lessee of the property refuses or fails to take the necessary action to control or eradicate such noxious weeds, insect pests, or plant diseases, after notice as prescribed in section 35-5-108, the county pest inspector shall treat the same as though listed on the tax rolls, and the expense thereof may be recovered by the county in an action therefor in any court of competent jurisdiction. The control or eradication of noxious weeds, insect pests, or plant diseases on county property may be contracted for by the inspector, with the approval of the board of county commissioners, at county expense.

Source: L. 59: p. 182, § 9. CRS 53: § 6-16-9. C.R.S. 1963: § 6-5-9. L. 83: Entire section amended, p. 1315, § 6, effective May 10.

35-5-110. Public nuisance - abatement. Any noxious weeds, insect pests, or plant diseases with respect to which a control district has been proclaimed, and any and all stages thereof, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith within such area are declared to be a public nuisance, subject to all laws and remedies relating to the prevention and abatement of nuisances. The inspector, under the supervision and direction of the commissioner and with the approval of the board of county commissioners, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in his discretion seems necessary. The remedies of this section shall be cumulative with all other remedies provided in this article.

Source: L. 59: p. 182, § 10. CRS 53: § 6-16-10. C.R.S. 1963: § 6-5-10.

35-5-111. Reports of acreage infested - county tax levy - fund - allocation. (1) The commissioner is directed, and it is his duty, to ascertain each year, from reports of the inspectors and other sources, the approximate amount of land and highways infested with the most troublesome noxious weeds, insect pests, or plant diseases, and their location, and transmit such information tabulated by counties, not later than July 1 of each year, to the board of county commissioners of each county affected by such infestation. On the basis of such information, the board of county commissioners of each county may make a tax levy each year on real property for the purpose of paying the cost of noxious weed, insect pest, or plant disease control or eradication in a district of the county as provided by this section, but such levy shall not exceed two mills in any one year.

(2) Moneys collected from such levy shall be set apart as a pest control fund, and moneys derived from a particular district shall be used only in that district, and moneys derived on a countywide basis shall be used for the whole county. Vouchers shall be drawn against said fund by the board for items of expense incident to the control or eradication of noxious weeds, insect pests, or plant diseases in the county or in any such district. Such expenditures and accounts shall be audited annually.

Source: L. 59: p. 182, § 11. CRS 53: § 6-16-11. L. 61: p. 158, § 1. L. 63: p. 160, § 2. C.R.S. 1963: § 6-5-11. L. 65: p. 178, § 2.

Cross references: For limitations on increasing levies of political subdivisions, see part 3 of article 1 of title 29.

35-5-112. Pest control district on public lands - notice - charges. (1) When an area designated as a pest control district by the board of county commissioners of any county contains public lands, it is the duty of the commissioner to notify the proper state departments which control or supervise the public lands within the area so designated that such a district has been formed. It is the duty of any such department so notified to control or eradicate all noxious weeds, insect pests, or plant diseases on any lands under its

jurisdiction, and included within the boundaries of the district and for which the district was organized, using the methods prescribed by the commissioner.

(2) In case such department fails to so control or eradicate such pests, it is the duty of the inspector in the county where the infestation is located to enter upon such lands and undertake the control or eradication of such noxious weeds, insect pests, or plant diseases, or cause the same to be done, the expense thereof to be a proper charge against the department which has jurisdiction over the lands. If not paid, such charge may be recovered in an action therefor by the county in any court of competent jurisdiction; except that it is permissible for any such state department which controls or supervises lands in the designated pest control district to enter into a contract with the board of county commissioners of the county wherein the land is situated to authorize the county pest inspector to undertake the control or eradication of all noxious weeds, insect pests, or plant diseases, as provided in this article, on state-controlled land in the district on terms and conditions satisfactory to both parties.

(3) In the case of lands controlled by the state board of land commissioners, which land is included within a district and leased to a lessee, the costs incurred in controlling or eradicating noxious weeds, insect pests, or plant diseases, which would be chargeable to the owner of the land if privately owned, shall be paid by the lessee.

(4) All park land in the state, except that owned by the United States, shall be excluded from charges provided for in this article, and the board of county commissioners of the county in which any such park is located shall be billed for any and all assessments on such park lands.

Source: L. 59: p. 183, § 12. CRS 53: § 6-16-12. C.R.S. 1963: § 6-5-12. L. 83: (1), (2), and (3) amended, p. 1316, § 7, effective May 10.

35-5-113. Deputy or agent may exercise power. Whenever any power or authority is given by any provisions of this article to any person, it may be exercised by any deputy or agent duly authorized by him.

Source: L. 59: p. 183, § 13. CRS 53: § 6-16-13. C.R.S. 1963: § 6-5-13.

35-5-114. Liberal construction. This article, being necessary to secure and preserve the public health, safety, convenience, and welfare, and for the security of public and private property, shall be liberally construed to effect the purpose of this article.

Source: L. 59: p. 184, § 14. CRS 53: § 6-16-14. C.R.S. 1963: § 6-5-14.

35-5-115. Dissolution of district. The district may be dissolved by the same procedure as the district was created on petition of twenty-five percent of the resident landowners of the district upon a vote of sixty-six and two-thirds percent of those owning the land in the district under similar procedure to that of organizing the district, if a program is not in effect. On and after July 1, 1990, a district may also be dissolved when such question is presented to the resident landowners by the board of county commissioners and more than fifty percent of said landowners voting on the issue vote to dissolve the district; except that no vote is required when two or more districts are being consolidated pursuant to section 35-5-104 (6).

Source: L. 59: p. 184, § 15. CRS 53: § 6-16-15. C.R.S. 1963: § 6-5-15. L. 90: Entire section amended, p. 1557, § 2, effective July 1. L. 2000: Entire section amended, p. 5, § 2, effective August 2.

35-5-116. Major grasshopper and range caterpillar infestations. Authority is hereby granted the governor of the state of Colorado to declare a major grasshopper or range caterpillar infestation and to declare an emergency resulting from said major infesta-

tion. Upon said declaration, funds from the governor's agricultural emergency and disaster fund shall be made available for grasshopper or range caterpillar control.

Source: **L. 75:** Entire section added, p. 1342, § 1, effective May 30. **L. 77:** Entire section amended, p. 1577, § 3, effective June 4.

35-5-117. Emergency measures. (1) When the governor determines and declares an emergency resulting from a major grasshopper or range caterpillar infestation, he shall specify the area or areas of the major infestation. Within such area or areas, he is authorized to direct that such emergency measures be taken as he deems necessary to alleviate conditions which gravely jeopardize property and resources.

(2) In directing that emergency measures be taken, the governor is hereby authorized to:

(a) Utilize equipment, supplies, facilities, personnel, and other like available resources belonging to the state of Colorado in possession of any state agency;

(b) Enter into contracts for the acquisition, rental, or hire of equipment, services, materials, and supplies;

(c) Accept assistance, services, and facilities tendered by federal and local governmental units or private agencies;

(d) Accept on behalf of the state the provisions and benefits of acts of congress designated to provide for assisting states.

Source: **L. 75:** Entire section added, p. 1342, § 1, effective May 30. **L. 77:** (1) amended, p. 1578, § 4, effective June 4.

35-5-118. Right of entry. All persons authorized to carry out emergency measures directed under the provisions of this article shall have free access to all public and private lands, premises, and buildings within the areas specified and are authorized to enter thereon and to perform such work and take such measures as directed without the consent of the owners thereof if the entry is reasonably necessary to actually alleviate or prevent the disaster.

Source: **L. 75:** Entire section added, p. 1343, § 1, effective May 30.

35-5-119. Procedure for establishing grasshopper and range caterpillar control districts. (Repealed)

Source: **L. 75:** Entire section added, p. 1343, § 1, effective May 30. **L. 77:** (1), (3), and (5) amended, p. 1578, § 5, effective June 4. **L. 83:** Entire section repealed, p. 1317, § 10, effective May 10.

35-5-120. Grasshopper and range caterpillar control. (1) The board of county commissioners of each county in which the governor has declared an emergency resulting from a major grasshopper or range caterpillar infestation is hereby authorized and directed to establish a system of priorities for any operation involving the control of grasshoppers or range caterpillars in infested areas. Such board of county commissioners shall certify to the commissioner any area within a county which has established a grasshopper or range caterpillar control district in areas infested with grasshoppers or range caterpillars and in which sixty-six and two-thirds percent of the landowners and lessees have agreed to pay a proportionate share of the cost per acre for grasshopper or range caterpillar control, as determined by the commissioner, as a contribution to pay the cost of controlling the grasshoppers or range caterpillars which are infesting said area.

(2) Upon receipt by the commissioner of a certification of such an area, and upon deposit with the commissioner of the landowner's and lessee's projected share of the cost of control for grasshoppers or range caterpillars, the commissioner shall immediately direct operations to commence to control the grasshoppers or range caterpillars in such area.

(3) In attempting to control grasshoppers or range caterpillars in established control districts, the commissioner shall not be required to conduct control operations on other than range acreage.

(4) If the commissioner, with approval of the district advisory committee as established in section 35-5-105, determines at any time that control operations would not significantly reduce the grasshopper or range caterpillar populations in the established control districts, he may order that said operations be suspended or terminated.

Source: **L. 75:** Entire section added, p. 1344, § 1, effective May 30. **L. 77:** Entire section amended, p. 1579, § 6, effective June 4. **L. 83:** (2) amended, p. 1316, § 8, effective May 10.

35-5-121. Immunity. Neither the state or its agencies, officers, or employees nor the officers, agents, employees, or representatives of any governmental or private concern shall be liable for any claim based upon the exercise or performance or the failure to exercise or perform a function prescribed under the provisions of sections 35-5-116 to 35-5-121.

Source: **L. 75:** Entire section added, p. 1344, § 1, effective May 30.

35-5-122. Costs of control operations. (1) The costs of grasshopper or range caterpillar control operations shall be borne as follows:

(a) Landowners and lessees in grasshopper or range caterpillar control districts shall assume one-third of the cost in those instances where the commissioner enters into an arrangement with APHIS whereby APHIS agrees to pay one-third of such costs.

(b) Landowners and lessees in grasshopper or range caterpillar control districts shall assume two-thirds of the costs in those instances where the commissioner is unable to enter into a cost-sharing arrangement with APHIS.

(c) One-third of the costs shall be paid from the governor's agricultural emergency and disaster fund.

(d) The money deposited by the landowners and lessees to control grasshoppers or range caterpillars shall be available to the commissioner to administer the control of such infestations.

Source: **L. 77:** Entire section added, p. 1579, § 7, effective June 4. **L. 83:** (1)(d) added, p. 1316, § 9, effective May 10.

35-5-123. Rules and regulations. (1) The commissioner is authorized, after opportunity for hearing and in accordance with article 4 of title 24, C.R.S., to promulgate appropriate rules and regulations concerning:

(a) Payment of costs by landowners and lessees, APHIS, and the governor's agricultural emergency and disaster fund;

(b) Procedures for awarding contracts for grasshopper and range caterpillar control operations, which procedures shall follow as nearly as practicable the procedures for awarding contracts of the department of personnel, the terms and conditions of such contracts, bonding requirements, and qualifications of those contracting to do the control work;

(c) Methods and materials of control to be used in grasshopper and range caterpillar control operations;

(d) Protection of the environment, businesses, and industries located in grasshopper and range caterpillar control districts.

(2) The commissioner is further empowered to make and publish such reasonable rules and regulations as are proper and necessary to put into effect the provisions of this article.

Source: **L. 77:** Entire section added, p. 1580, § 7, effective June 4. **L. 95:** (1)(b) amended, p. 666, § 104, effective July 1.

35-5-124. No weed districts. (Repealed)

Source: L. 90: Entire section added, p. 1557, § 3, effective July 1. **L. 2003:** Entire section repealed, p. 847, § 2, effective April 7.

35-5-125. Cooperation between districts. (1) When pests may be more economically, completely, or satisfactorily managed, two or more boards of county commissioners may contract with one another to manage and control pests, including, but not limited to, sharing costs and employees. A board of county commissioners shall not contract to share resources, including costs or employees, with another such board unless both boards and both district advisory committees of such boards authorize such sharing.

(2) A contract created pursuant to subsection (1) of this section shall be in writing and contain the purposes, rights, powers, responsibilities, and financial obligations of each contracting county.

(3) If other law has requirements applicable to special types of intergovernmental contracts or cooperative agreements, such law shall control.

Source: L. 2003: Entire section added, p. 847, § 1, effective April 7.

ARTICLE 5.5**Colorado Noxious Weed Act**

35-5.5-101.	Short title.	35-5.5-108.7.	State noxious weed advisory committee - repeal.
35-5.5-102.	Legislative declaration - rule of construction.	35-5.5-109.	Private lands - management of noxious weeds - charges.
35-5.5-103.	Definitions.	35-5.5-110.	Public lands - control of undesirable plants - charges.
35-5.5-104.	Duty to manage noxious weeds.	35-5.5-111.	Cooperation with federal and state agencies.
35-5.5-104.5.	Intentional introduction, cultivation, or sale of noxious weeds - costs.	35-5.5-112.	Public rights-of-way - management of noxious weeds - charges.
35-5.5-105.	Noxious weed management - powers of county commissioners.	35-5.5-113.	Public nuisance - abatement.
35-5.5-106.	Noxious weed management - municipal authority.	35-5.5-114.	Review of compliance on federal land. (Repealed)
35-5.5-107.	Local advisory board - formation - duties.	35-5.5-114.1.	Survey of compliance on federal land.
35-5.5-108.	Designated noxious weeds - legislative declaration.	35-5.5-115.	Rules.
35-5.5-108.5.	Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners.	35-5.5-116.	Noxious weed management fund - creation - allocation of funds.
		35-5.5-117.	The state weed coordinator.
		35-5.5-118.	Civil penalties.
		35-5.5-119.	County funding.

35-5.5-101. Short title. This article shall be known and may be cited as the “Colorado Noxious Weed Act”.

Source: L. 90: Entire article added, p. 1549, § 1, effective July 1. **L. 96:** Entire section amended, p. 763, § 3, effective May 23.

35-5.5-102. Legislative declaration - rule of construction. (1) In enacting this article the general assembly finds and declares that there is a need to ensure that all the lands of the state of Colorado, whether in private or public ownership, are protected by and subject to the jurisdiction of a local government empowered to manage undesirable plants as designated by the state of Colorado and the local governing body. In making such

determination the general assembly hereby finds and declares that certain undesirable plants constitute a present threat to the continued economic and environmental value of the lands of the state and if present in any area of the state must be managed. It is the intent of the general assembly that the advisory commissions appointed by counties and municipalities under this article, in developing undesirable plant management plans, consider the elements of integrated management as defined in this article, as well as all appropriate and available control and management methods, seeking those methods which are least environmentally damaging and which are practical and economically reasonable.

(1.5) The general assembly hereby finds and declares that:

(a) Noxious weeds have become a threat to the natural resources of Colorado, as thousands of acres of crop, rangeland, and habitat for wildlife and native plant communities are being destroyed by noxious weeds each year;

(b) An organized and coordinated effort must be made to stop the spread of noxious weeds and that such an effort can best be facilitated by a state coordinator who will assist in building local coalitions and coordinate the efforts of state, federal, local, and private landowners in developing plans for the control of noxious weeds without unnecessarily disrupting the development of such lands;

(c) The designation and classification of noxious weeds into categories for immediate eradication, containment, and suppression will further assist the state in coordinating efforts to stop the spread of noxious weeds;

(d) Because the spread of noxious weeds can largely be attributed to the movement of seed and plant parts on motor vehicles, and because noxious weeds are becoming an increasing maintenance problem on highway right-of-ways in this state, additional resources are needed to fight the spread of noxious weeds; and

(e) The use of moneys in the noxious weed management fund to assist local governing bodies and affected landowners in the eradication, containment, or suppression of noxious weeds best serves the citizens of Colorado.

(2) This article is in addition to article 5 of this title and is intended to be an expansion of, not a substitution for, the provisions of said article 5.

Source: L. 90: Entire article added, p. 1549, § 1, effective July 1. **L. 96:** (1.5) added, p. 764, § 4, effective May 23. **L. 2003:** (1.5) amended, p. 2415, § 1, effective August 6.

35-5.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(2) "Alien plant" means a plant species that is not indigenous to the state of Colorado.

(3) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(4) "Commissioner" means the commissioner of the department of agriculture or his or her designee.

(4.5) "Department" means the department of agriculture.

(5) "District" means a local governing body's geographic description of a land area where noxious weeds are to be managed.

(6) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(7) "Federal agency" means each agency, bureau, or department of the federal government responsible for administering or managing federal land.

(8) "Federal land manager" means the federal agency having jurisdiction over any federal lands affected by the provisions of this article.

(9) "Integrated management" means the planning and implementation of a coordinated program utilizing a variety of methods for managing noxious weeds, the purpose of which is to achieve specified management objectives and promote desirable plant communities. Such methods may include but are not limited to education, preventive measures, good stewardship, and the following techniques:

(a) "Biological management", which means the use of an organism to disrupt the growth of noxious weeds.

(b) "Chemical management", which means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.

(c) "Cultural management", which means methodologies or management practices that favor the growth of desirable plants over noxious weeds, including maintaining an optimum fertility and plant moisture status in an area, planting at optimum density and spatial arrangement in an area, and planting species most suited to an area.

(d) "Mechanical management", which means methodologies or management practices that physically disrupt plant growth, including tilling, mowing, burning, flooding, mulching, hand-pulling, hoeing, and grazing.

(10) "Landowner" means any owner of record of federal, tribal, state, county, municipal, or private land.

(10.5) "Local advisory board" means those individuals appointed by the local governing body to advise on matters of noxious weed management.

(11) "Local governing body" means the board of county commissioners of a county, the city council of a city and county or statutory or home rule city, the board of trustees of a statutory town or home rule town, or the board of selectmen or city council of a territorial charter municipality, as the context so requires.

(11.4) "Local noxious weed" means any plant of local importance that has been declared a noxious weed by the local governing body.

(11.6) "Management" means any activity that prevents a plant from establishing, reproducing, or dispersing itself.

(11.7) "Management objective" means the specific, desired result of integrated management efforts and includes:

(a) "Eradication" which means reducing the reproductive success of a noxious weed species or specified noxious weed population in largely uninfested regions to zero and permanently eliminating the species or population within a specified period of time. Once all specified weed populations are eliminated or prevented from reproducing, intensive efforts continue until the existing seed bank is exhausted.

(b) "Containment" which means maintaining an intensively managed buffer zone that separates infested regions, where suppression activities prevail, from largely uninfested regions, where eradication activities prevail.

(c) "Suppression" which means reducing the vigor of noxious weed populations within an infested region, decreasing the propensity of noxious weed species to spread to surrounding lands, and mitigating the negative effects of noxious weed populations on infested lands. Suppression efforts may employ a wide variety of integrated management techniques.

(d) "Restoration" which means the removal of noxious weed species and reestablishment of desirable plant communities on lands of significant environmental or agricultural value in order to help restore or maintain said value.

(12) "Management plan" means the noxious weed management plan developed by any person or the local advisory board using integrated management.

(13) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(14) "Municipality" has the meaning set forth in section 31-1-101 (6), C.R.S.

(15) "Native plant" means a plant species that is indigenous to the state of Colorado.

(16) "Noxious weed" means an alien plant or parts of an alien plant that have been designated by rule as being noxious or has been declared a noxious weed by a local advisory board, and meets one or more of the following criteria:

(a) Aggressively invades or is detrimental to economic crops or native plant communities;

(b) Is poisonous to livestock;

(c) Is a carrier of detrimental insects, diseases, or parasites;

(d) The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

(16.2) "Noxious weed management" means the planning and implementation of an integrated program to manage noxious weed species.

(17) "Person" or "occupant" means an individual, partnership, corporation, association, or federal, state, or local government or agency thereof owning, occupying, or controlling any land, easement, or right-of-way, including any city, county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit,

gas and oil pipeline, high voltage electrical transmission line, or right-of-way for a canal or lateral.

(18) "Plant growth regulator" means a substance used for controlling or modifying plant growth processes without appreciable phytotoxic effect at the dosage applied.

(18.5) "State noxious weed" means any noxious weed identified by the commissioner by rule after notifying and consulting with the state noxious weed advisory committee created in section 35-5.5-108.7.

(18.6) "State weed coordinator" means the state weed coordinator under contract with or appointed by the commissioner pursuant to section 35-5.5-117.

(19) and (20) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(21) "Weed" means any undesirable plant.

Source: L. 90: Entire article added, p. 1550, § 1, effective July 1. L. 96: Entire section amended, p. 764, § 5, effective May 23. L. 2003: (4), IP(9), (10), and (18.5) amended and (11.7) added, p. 2416, § 2, effective August 6.

35-5.5-104. Duty to manage noxious weeds. It is the duty of all persons to use integrated methods to manage noxious weeds if the same are likely to be materially damaging to the land of neighboring landowners.

Source: L. 90: Entire article added, p. 1551, § 1, effective July 1. L. 96: Entire section amended, p. 767, § 6, effective May 23.

35-5.5-104.5. Intentional introduction, cultivation, or sale of noxious weeds - costs.

(1) (a) It shall be unlawful to intentionally introduce, cultivate, sell, offer for sale, or knowingly allow to grow in violation of this article or any rule promulgated hereunder in this state any noxious weed designated pursuant to section 35-5.5-108 (2) (a); except that this prohibition shall not apply to:

(I) Research sanctioned by a state or federal agency or an accredited university or college;

(II) Activities specifically permitted by the commissioner;

(III) Noxious weed management plans that are part of an approved reclamation plan pursuant to section 34-32-116 (7) or 34-32.5-116 (4), C.R.S.;

(IV) Noxious weed management activities that are conducted on disturbed lands as part of an approved reclamation plan pursuant to section 34-33-111 (1), C.R.S.; or

(V) Noxious weed management activities that are part of activities conducted on disturbed lands pursuant to section 34-60-106 (12), C.R.S.

(b) It shall not be a violation of this section for a person to knowingly allow to grow a state noxious weed that is being properly managed in accordance with the rules promulgated by the commissioner.

(2) Any entity or person that violates the provisions of this section shall be responsible for the costs associated with remediation of the noxious weeds. In assessing the cost of remediation, the commissioner may include both actual immediate and estimated future costs to achieve specified management objectives.

Source: L. 2003: Entire section added, p. 2417, § 3, effective August 6.

35-5.5-105. Noxious weed management - powers of county commissioners.

(1) The board of county commissioners of each county in the state shall adopt a noxious weed management plan for all of the unincorporated lands within the county. Such plan shall include all of the requirements and duties imposed by this article. Guidelines may be included that address no pesticide noxious weed management plans. In addition to and not in limitation of the powers delegated to boards of county commissioners in section 30-11-107 and article 15 of title 30, C.R.S., article 5 of this title, and elsewhere as provided by law, the board of county commissioners may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper

to enforce said plan and otherwise provide for the management of noxious weeds within the county, subject to the following limitation: No county ordinance, rule, resolution, other regulation, or exercise of power pursuant to this article shall apply within the corporate limits of any incorporated municipality, nor to any municipal service, function, facility, or property, whether owned by or leased to the incorporated municipality outside the municipal boundaries unless the county and municipality agree otherwise pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) The board of county commissioners shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of all or part of the management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation. Costs associated with the administration of the noxious weed management plan shall be paid from the noxious weed management fund of each county.

(3) The board of county commissioners may cooperate with other counties and municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

Source: L. 90: Entire article added, p. 1551, § 1, effective July 1. L. 96: (1) and (2) amended, p. 767, § 7, effective May 23.

35-5.5-106. Noxious weed management - municipal authority. (1) The governing body of each municipality in the state shall adopt a noxious weed management plan for all lands within the territorial limits of the municipality. In addition to and independent of the powers elsewhere delegated by law, the governing body of a municipality may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the municipality, subject to the following limitation: No municipal ordinance, resolution, rule, other regulation, or exercise of power pursuant to this article shall apply to unincorporated lands or facilities outside the corporate limits of the municipality, except such lands or facilities which are owned by or leased to the municipality, unless the municipality and the county otherwise agree pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) The governing body of the municipality shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of all or part of the noxious weed management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation.

(3) The governing body may cooperate with counties and other municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(4) To the degree that a municipality has, upon enactment of this article, or subsequent to that date, adopted an ordinance or ordinances for the management of noxious weeds, the adoption of such an ordinance or ordinances shall be deemed to satisfy the requirement for the adoption of a noxious weed management plan imposed by this article.

Source: L. 90: Entire article added, p. 1552, § 1, effective July 1. L. 96: (1), (2), and (4) amended, p. 768, § 8, effective May 23.

35-5.5-107. Local advisory board - formation - duties. (1) The governing body of each county and municipality shall appoint a local advisory board. The local governing

body, at its sole option, may appoint itself, or a commission of landowners, to act as the local advisory board for that jurisdiction. The members of each local advisory board shall be residents of the unincorporated portion of the county or residents of the municipality, as the case may be, and in the case of a county, at least a majority of the members of the local advisory board shall be landowners of over forty acres.

(2) In the event a county or municipality elects to cooperate with another county or municipality for any of the purposes set forth in this article, the membership of the local advisory board shall be determined by the governing bodies of such cooperating local governments.

(3) Each local advisory board shall annually elect a chairman and secretary. A majority of the members of the board shall constitute a quorum for the conduct of business.

(4) Local advisory boards shall have the power and duty to:

(a) Develop a recommended management plan for the integrated management of designated noxious weeds and recommended management criteria for noxious weeds within the area governed by the local government or governments appointing the local advisory board. The management plan shall be reviewed at regular intervals but not less often than once every three years by the local advisory board. The management plan and any amendments made thereto shall be transmitted to the local governing body for approval, modification, or rejection.

(b) Declare noxious weeds and any state noxious weeds designated by rule to be subject to integrated management;

(c) Recommend to the local governing body that identified landowners be required to submit an individual integrated management plan to manage noxious weeds on their property.

(5) The local governing body shall have the sole and final authority to approve, modify, or reject the management plan, management criteria, management practice, and any other decision or recommendation of the local advisory board.

(6) The state weed coordinator shall review any recommendations of a local advisory board appointed pursuant to article 5 of this title and note any inconsistencies between the recommendations of the state weed coordinator or the commissioner and any such local advisory board.

Source: L. 90: Entire article added, p. 1552, § 1, effective July 1. **L. 96:** Entire section amended, p. 768, § 9, effective May 23.

35-5.5-108. Designated noxious weeds - legislative declaration. (1) The general assembly hereby finds and declares that the noxious weeds designated by rule are a present threat to the economic and environmental value of the lands of the state of Colorado and declare it to be a matter of statewide importance that the governing bodies of counties and municipalities include plans to manage such weeds as part of their duties pursuant to this article.

(2) (a) The state list of plant species that are designated as noxious weeds shall be designated by rule and shall be managed under the provisions of this article. On and after August 6, 2003, the commissioner shall classify noxious weeds into one of a minimum of three categories, including:

(I) "List A", which means rare noxious weed species that are subject to eradication wherever detected statewide in order to protect neighboring lands and the state as a whole;

(II) "List B", which means noxious weed species with discrete statewide distributions that are subject to eradication, containment, or suppression in portions of the state designated by the commissioner in order to stop the continued spread of these species;

(III) "List C", which means widespread and well-established noxious weed species for which control is recommended but not required by the state, although local governing bodies may require management.

(b) A local governing body may adopt eradication, containment, or suppression standards that are more stringent than the standards adopted by the commissioner.

(2.1) The commissioner shall review and revise, as necessary, the state noxious weed list at least once every three years.

(2.3) The commissioner shall develop and implement by rule state noxious weed management plans for noxious weed species classified as list A or list B species. For each noxious weed species, each management plan shall designate the management objectives for all lands of the state appropriate to achieve the stated purpose of the species classification.

(2.5) The commissioner shall prescribe integrated management techniques to achieve specified management objectives for each listed species after consulting with the state noxious weed advisory committee. The prescribed management techniques shall be mandatory techniques for list A species and populations of list B species designated for eradication. The commissioner shall develop management techniques pursuant to science-based methodologies, peer reviewed studies, or any other method that is based on credible research.

(2.6) The classifications made pursuant to paragraph (a) of subsection (2) of this section shall primarily reflect the known distribution of the designated species, the feasibility of current control technologies to achieve specified management objectives, and the costs of carrying out the prescribed state weed management plan.

(2.7) (a) The commissioner shall also adopt rules for granting compliance waivers to local governing bodies and landowners; except that a waiver may not be granted to the affected landowner when a landowner has wilfully or wantonly violated the provisions of this section or section 35-5.5-104.5 or 35-5.5-108.5 attempts to delay eradication of a species without just cause.

(b) Such rules shall include:

(I) A process by which a local governing body or an affected landowner may petition the commissioner to change the management objectives specified in a state noxious weed management plan;

(II) The criteria used to evaluate such petitions; and

(III) Time frames in which the commissioner shall grant or deny such petitions.

(c) Actions sufficient to implement the management objective for a noxious weed species shall continue until the commissioner grants a waiver pursuant to this subsection (2.7).

(3) The board of county commissioners or governing body of a municipality may declare additional noxious weeds, within its jurisdictional boundaries, after a public hearing with thirty days prior notice to the public. Any declaration of additional noxious weeds pursuant to this subsection (3) shall include the management objectives for all affected landowners.

Source: **L. 90:** Entire article added, p. 1553, § 1, effective July 1. **L. 96:** Entire section amended, p. 769, § 10, effective May 23. **L. 2003:** (2) and (3) amended and (2.1), (2.3), (2.5), (2.6), and (2.7) added, p. 2423, § 4, effective August 6.

35-5.5-108.5. Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners. (1) This section shall apply to noxious weeds that have been classified as list A species and to populations of list B species designated for eradication pursuant to section 35-5.5-108 (2) (a). This section shall govern the responsibilities of the commissioner, local governing bodies, and affected landowners.

(2) **Duties of commissioner.** (a) The commissioner may enforce the provisions of this section as necessary to ensure the cooperation of local governing bodies and affected landowners.

(b) The commissioner shall provide:

(I) Educational resources to local governing bodies and affected landowners regarding the eradication of list A species and populations of list B species designated for eradication. Such education shall include an explanation of why the species has been listed for eradication, the prescribed techniques for eradication in the most cost-effective manner, and the duties of the local governing body and affected landowner regarding such eradication.

(II) Financial or in-kind resources to local governing bodies or affected landowners to eradicate list A species and populations of list B species designated for eradication from the

available moneys in the noxious weed management fund created in section 35-5.5-116. Such financial or in-kind resource allocation shall be determined by the commissioner according to the identified benefits to the citizens of Colorado, the surrounding community, and the affected landowners.

(III) The inventory and mapping infrastructure necessary to facilitate the classification of state noxious weeds and the development and implementation of state noxious weed management plans.

(3) **Duties of local governing bodies.** (a) In compliance with the rules promulgated by the commissioner, a local governing body shall initiate and maintain communications with landowners who are affected by list A species and populations of list B species designated for eradication by the commissioner.

(b) In addition to the existing powers and duties of a local governing body provided in this article a local governing body shall:

(I) Provide affected land owners with technical assistance for the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(II) Carry out sufficient measures, including project oversight and enforcement, as may be necessary to ensure the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(III) Provide the commissioner with assistance in disseminating financial resources to affected landowners and mapping data pursuant to rules promulgated by the commissioner; and

(IV) Determine the cost of eradication to be borne by affected landowners.

(c) Local governing bodies may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(d) If the commissioner determines, in consultation with the local governing body, that the most cost-effective manner to eradicate designated noxious weeds is for the commissioner to implement an eradication program, the commissioner may implement the eradication program directly.

(4) **Duties of affected landowners or occupants.** Except as provided pursuant to section 35-5.5-104.5 (1) (a), an affected landowner or occupant whose property may be affected by list A species or by populations of list B species designated for eradication shall allow the commissioner or local weed control officials access to such property for the purpose of immediate inspection and eradication when at least one of the following events has occurred:

(a) The affected landowner or occupant has requested the inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government or commissioner has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(5) (a) If verbal permission to inspect the land by the affected landowner is not obtained, no entry upon any premises, lands, or places shall be permitted until the local governing body has notified the affected landowner that such inspection is pending by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. Where possible, inspections shall be scheduled and conducted with the concurrence of the affected landowner or occupant. A local governing body may notify an affected landowner in an electronic format, in addition to notice by certified mail.

(b) (I) If, after ten days with no response from the affected landowner or upon denial of access before the expiration of ten days, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body of an affidavit stating:

(A) The information that gives the inspector reasonable cause to believe that any provision of this section, section 35-5.5-104.5, or section 35-5.5-108, is being or has been violated;

(B) The affected landowner has failed to respond or the landowner or occupant has denied access to the inspector; and

(C) A general description of the location of the affected land.

(II) No affected landowner or occupant shall deny access to an authorized agent of the local governing body or the commissioner in possession of an inspection warrant.

(6) An affected landowner shall notify a lessee or occupant of affected lands of all notices of inspection and eradication efforts on such lands as soon as practicable.

(7) The local governing body of the county or municipality having jurisdiction over private and public lands on which list A species or populations of list B species designated for eradication are found shall notify the affected landowner or occupant of such lands by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. The notice shall name the noxious weeds, identify eradication as the required management objective, advise the affected landowner or occupant to commence eradication efforts within a specified period or condition, and state the integrated weed management techniques prescribed by the commissioner for eradication. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the eradication of noxious weeds on the premises or land.

(8) Within five days after the local governing body mails notification, the landowner shall comply with the terms of the notification or submit an acceptable plan and schedule for the completion of the management objective.

(9) (a) In the event the affected landowner or occupant fails to comply with the notice to eradicate the identified noxious weeds and implement an appropriate eradication program, the local governing body having authority over the public or private land shall:

(I) Provide for and complete the eradication of such noxious weeds at such time, upon such notice, and in such manner consistent with achieving the management objective as the local governing body deems appropriate; and

(II) Do one of the following:

(A) Assess the whole cost of the eradication, including up to one hundred percent of inspection, eradication, and other incidental costs in connection with eradication, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as a part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be utilized in furtherance of the local governing body's weed management efforts.

(B) In the event the state board, department, or agency fails to comply with the notice to eradicate the identified noxious weeds, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done. The expenses associated with inspection and eradication shall be paid by the state board, department, or agency that has jurisdiction over the lands. An agreement for reimbursement shall be reached within two weeks after the date such statement of expense for eradication is submitted by the local governing body. Such reimbursement agreement shall be in writing. If no reimbursement agreement has been reached or the amount reflected in the agreement is not paid upon presentation, the amount in the agreement shall be submitted to the state controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved or such charge may be recovered in any court with jurisdiction over such lands. The expense associated with eradication may be recovered in any court with jurisdiction over such infested land.

(b) No local governing body shall provide for or compel the eradication of list A species and populations of list B species designated for eradication or list B noxious weeds on private or public property pursuant to this subsection (9) without first applying the same measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the property.

(10) The local governing body, through its delegates, agents, or employees, shall have the right to enter upon any premises, lands, or places during reasonable business hours for the purpose of ensuring compliance with the requirements of this section concerning noxious weed eradication.

(11) No agent, employee, or delegate of a local governing body shall have a cause of action against an affected landowner or occupant for personal injury or property damages while on private or public land for purposes of eradication of noxious weeds except when such damages were the result of gross negligence, recklessness, or intentional action by the landowner.

(12) If, in the opinion of the commissioner, any local governing body fails to adequately perform any of the duties set forth in this section, the commissioner is authorized to conduct any of the functions or duties of a local governing body pursuant to this section.

(13) The commissioner or the local governing body may require the affected landowner to pay a portion of the costs associated with eradication of the noxious weeds.

(14) An affected landowner may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(15) For the purposes of this section, an "occupant" shall not include the owner of an easement or right-of-way.

Source: L. 2003: Entire section added, p. 2417, § 3, effective August 6.

35-5.5-108.7. State noxious weed advisory committee - repeal. (1) (a) There is hereby created the state noxious weed advisory committee, referred to in this section as the "state advisory committee". The state advisory committee shall consist of fifteen members. Such members shall be appointed by the commissioner and shall serve without per diem compensation or expenses. Of the fifteen members, at least one member shall represent private and public landowners or land managers; at least two members shall represent weed management professionals from the federal, state, or local levels; at least one member shall represent public or private weed scientists; at least two members shall represent local governing bodies; four members shall be agricultural producers, as defined in section 35-1-102; and at least three members shall represent knowledgeable resource specialists or industries, including, but not limited to, environmental organizations. Representation on the state advisory committee shall reflect the different geographic areas of the state equally, to the greatest extent possible. Members of the state advisory committee that represent the various stakeholders and regions shall solicit input from similar stakeholders within each member's area of expertise and region of the state. Members of the state advisory committee shall communicate the committee's recommendations to the region and stakeholders represented by each member.

(b) Staggered appointments shall be made so that not more than eight members' terms expire in any one year, and thereafter appointments shall be for terms of two years each. Appointees shall be limited to two full terms each. Each state advisory committee member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed.

(c) In the event of a vacancy on the state advisory committee, the commissioner shall fill such vacancy promptly to allow a quorum of the state advisory committee to function.

(d) The commissioner may remove any member of the state advisory committee for misconduct, incompetence, or neglect of duty.

(e) A quorum of the state advisory committee shall elect or appoint annually a chairman and a vice-chairman.

(f) A quorum of the state advisory committee shall be a majority of the members appointed to the state advisory committee.

(g) The state advisory committee shall meet at least quarterly.

(2) The state advisory committee shall make recommendations to the commissioner concerning the:

- (a) Designation of state noxious weeds;
- (b) Classification of state noxious weeds;
- (c) Development and implementation of state weed management plans; and

(d) Prescribed techniques for eradication, containment, and suppression of state noxious weeds.

(3) Recommendations of the state advisory committee shall be made by a majority vote of the members of the state advisory committee.

(4) The state advisory committee shall periodically assess the progress made to implement the provisions of sections 35-5.5-104.5, 35-5.5-108.5, 35-5.5-108.7, and 35-5.5-108 (2) (a); measure the results and effectiveness of endeavors to eradicate, contain, and suppress noxious weeds within this state; and recommend to the commissioner ways to enhance statewide efforts to stop the spread of noxious weeds.

(5) This section is repealed, effective July 1, 2013. Prior to such repeal, the state noxious weed advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 2003: Entire section added, p. 2422, § 3, effective August 6. **L. 2008:** (5) amended, p. 1913, § 123, effective August 5.

35-5.5-109. Private lands - management of noxious weeds - charges. (1) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one of the following circumstances has occurred:

(a) The landowner or occupant has requested an inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(2) (a) No entry upon any premises, lands, or places shall be permitted until the landowner or occupant has been notified by certified mail that such inspection is pending. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(b) If after receiving notice that an inspection is pending the landowner or occupant denies access to the inspector of the local governing body, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body, through its agent or employee, of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being or has been violated; that the occupant or landowner has denied access to the inspector; and a general description of the location of the affected land. No landowner or occupant shall deny access to such land when presented with an inspection warrant.

(3) The local governing body of the county or municipality having jurisdiction over private lands upon which noxious weeds are found shall have the authority, acting directly or indirectly through its agent or staff, to notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of noxious weeds. Said notice shall name the noxious weeds, advise the landowner or occupant to manage the noxious weeds, and specify the best available control methods of integrated management. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the management of noxious weeds on the premises or lands.

(4) (a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the landowner or occupant shall either:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The landowner or occupant shall be entitled to challenge any one member of the panel, and the

local governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(5) (a) In the event the landowner or occupant fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body has the authority to:

(I) Provide for and compel the management of such noxious weeds at such time, upon such notice, and in such manner as the local governing body shall prescribe by ordinance or resolution; and

(II) Assess the whole cost thereof, including up to twenty percent for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be deposited in the local governing body's weed fund or any similar fund.

(b) No local governing body shall provide for or compel the management of noxious weeds on private property pursuant to this subsection (5) without first applying the same or greater management measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the private property.

(c) No local governing body shall assess the cost of providing for or compelling the management of noxious weeds on private property until the level of management called for in the notice or the management plan developed by the arbitration panel has been successfully achieved.

(6) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of ensuring compliance with the requirements of this article concerning noxious weed management and any other local requirements.

(7) No agent, employee, or delegate of a local governing body shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with this article except when such damages were willfully or deliberately caused by the landowner.

Source: L. 90: Entire article added, p. 1554, § 1, effective July 1. **L. 96:** (1), (2)(a), (3), (5), and (6) amended, p. 770, § 11, effective May 23.

35-5.5-110. Public lands - control of undesirable plants - charges. (1) It is the duty of each state board, department, or agency that administers or supervises state lands to manage noxious weeds on any lands under its jurisdiction using the methods prescribed by the local governing body in whose jurisdiction such state lands are located. The local governing body may give notice to any such state board, department, or agency advising of the presence of noxious weeds and naming them. Such notice shall specify the best available methods of integrated management that are not in conflict with federal law or contractual restrictions included in federal land conveyances to the state. Wherever possible, the local governing body shall consult with the affected state board, department, or agency in the development of a plan for the management of noxious weeds on the premises or lands.

(2) (a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the state board, department, or agency shall do one of the following:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance;

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The

state board, department, or agency shall be entitled to challenge any one member of the panel, and the local governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(3) In the event the state board, department, or agency fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done, the expense thereof to be a proper charge against said state board, department, or agency which has jurisdiction over the lands. An agreement for payment shall be reached within two weeks after the date such an expense is submitted, with respect to the amount of reimbursement to be paid. Such agreement shall be in writing. If no agreement has been reached and if the charge is not immediately paid, such charge shall be submitted to the controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved, or such charge may be recovered in any court with jurisdiction over such lands. Any state board, department, or agency may enter into a contract with the local governing body to authorize the management of noxious weeds on state-administered land on terms and conditions satisfactory to both parties.

(4) In addition to the requirements of subsection (3) of this section, the division shall enter into agreements with local governing bodies for the control of weeds on any property the division owns in fee title or has effective surface control over pursuant to a long-term lease or easement agreement. For purposes of this subsection (4) and subsection (5) of this section, "long-term lease or easement agreement" means any lease or easement agreement that exceeds ten years. Agreements between the division and local governing bodies for weed control shall describe the terms and conditions of weed control, provide an annual estimated budget for such weed control, and identify specific weed control responsibilities for the division and the property owner, if different than the division. Weed control agreements required pursuant to this subsection (4) shall be executed on or before July 1, 1997.

(5) Any weed control expense incurred by a local governing body pursuant to subsection (3) of this section on any lands held by the division in fee title or by long-term lease or easement agreement, as described in subsection (4) of this section, and for which a weed control agreement as described in subsection (4) of this section has been signed, and which costs are in accordance with that long-term agreement, shall be deemed correct and final and shall be paid by the division pursuant to section 33-1-110 (6.5), C.R.S.

Source: L. 90: Entire article added, p. 1556, § 1, effective July 1. **L. 96:** (1) and (3) amended, p. 772, § 12, effective May 23; (3) amended and (4) and (5) added, p. 1370, § 3, effective June 3.

Editor's note: Amendments to subsection (3) by House Bill 96-1008 and House Bill 96-1014 were harmonized.

35-5.5-111. Cooperation with federal and state agencies. The local governing bodies of all counties and municipalities in this state are hereby authorized to enter into cooperative agreements with federal and state agencies for the integrated management of noxious weeds within their respective territorial jurisdictions.

Source: L. 90: Entire article added, p. 1557, § 1, effective July 1. **L. 96:** Entire section amended, p. 772, § 13, effective May 23.

35-5.5-112. Public rights-of-way - management of noxious weeds - charges. It shall be the duty of each local governing body and each state board, department, or agency to confirm that all public roads, public highways, public rights-of-way, and any easements appurtenant thereto, under the jurisdiction of each such entity, are in compliance with this article, and any violations of this article shall be the financial responsibility of the appropriate local governing body or state board, department, or agency.

Source: **L. 90:** Entire article added, p. 1557, § 1, effective July 1. **L. 96:** Entire section amended, p. 772, § 14, effective May 23.

35-5.5-113. Public nuisance - abatement. All noxious weeds, at any and all stages, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith may be declared to be a public nuisance by the local governing body having jurisdiction over the lands upon which said noxious weeds are situated. Once declared, such nuisances are subject to all laws and remedies relating to the prevention and abatement of nuisances. The local governing body, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in its discretion appears necessary. The remedies of this section shall be in addition to all other remedies provided by law.

Source: **L. 90:** Entire article added, p. 1557, § 1, effective July 1. **L. 96:** Entire section amended, p. 773, § 15, effective May 23.

35-5.5-114. Review of compliance on federal land. (Repealed)

Source: **L. 90:** Entire article added, p. 1557, § 1, effective July 1. **L. 96:** Entire section repealed, p. 1218, § 12, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

35-5.5-114.1. Survey of compliance on federal land. On or before January 1, 1998, the state weed coordinator shall survey those counties that include significant amounts of federal land to determine the level of cooperation and compliance by the federal government with this article.

Source: **L. 96:** Entire section added, p. 773, § 16, effective May 23.

35-5.5-115. Rules. The commissioner shall promulgate rules as necessary to carry out the purposes of this article, which rules shall include a designation of state noxious weeds.

Source: **L. 96:** Entire section added, p. 773, § 17, effective May 23.

35-5.5-116. Noxious weed management fund - creation - allocation of funds. (1) There is hereby created in the office of the state treasurer the noxious weed management fund. The fund shall consist of any civil penalties collected pursuant to section 35-5.5-118; any gifts, donations, and grants received pursuant to section 35-1-104 (1) (cc); and any moneys approved by the general assembly for the purpose of funding noxious weed management projects. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The general assembly shall annually appropriate moneys in the fund to the department of agriculture for the purposes specified in subsection (2) of this section.

(2) The interest earned on moneys in the noxious weed management fund and appropriated to the department of agriculture shall be expended for costs incurred by the department of agriculture in administering this article, and any moneys appropriated that exceed the amount needed for such costs may be expended for noxious weed management projects in accordance with this section.

(3) The department may expend moneys through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects.

(4) The department may expend moneys for the following purposes:

- (a) Noxious weed management programs with local weed control districts, if expenses are shared with such districts;
 - (b) With the approval of the agricultural commission, the department may make special grants to local weed control districts to eradicate or contain state noxious weeds, which grants may be issued without matching funds from the district;
 - (c) Administrative expenses incurred by the department;
 - (d) Any project the agricultural commission determines will significantly contribute to the management of noxious weeds within the state;
 - (e) With the approval of the agricultural commission, grants to the Colorado state university cooperative extension service, the Colorado state university experiment station, and universities for weed management research, evaluation, and education;
 - (f) Employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures shall be shared with such organizations.
- (5) If a new and potentially harmful noxious weed is discovered growing in the state and its presence is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, the department is authorized to allocate up to fifty thousand dollars of the principal in the noxious weed management fund to government agencies for emergency relief to manage or confine the new noxious weed species.

Source: L. 96: Entire section added, p. 773, § 17, effective May 23.

35-5.5-117. The state weed coordinator. (1) There shall be designated in the department of agriculture a state weed coordinator, who shall be under contract with or appointed by the commissioner.

(2) The state weed coordinator shall:

- (a) Develop a recommended management plan for the integrated management of designated noxious weeds within state-owned lands;
- (b) Facilitate cooperation between federal, state, and local land managers in the formation of a memorandum of understanding;
- (c) Provide guidance and coordination for local governmental weed managers.

Source: L. 96: Entire section added, p. 773, § 17, effective May 23. **L. 2005:** (1) amended, p. 881, § 1, effective June 1.

35-5.5-118. Civil penalties. (1) (a) Any person who violates this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined that the person has violated the provision or rule more than once. No civil penalty shall be imposed unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) In addition to any civil penalties assessed pursuant to paragraph (a) of this subsection (1), any person who violates the provisions of section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5, or any rule adopted to implement these sections, shall, upon an order of the commissioner, pay the cost of inspection and eradication of list A or list B noxious weed species, including, but not limited to, any immediate remediation costs, the estimated cost of future eradication, any administrative costs, and any court cost and attorney fees incurred by the commissioner in enforcing section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5, or any rule adopted to implement these sections. The commissioner may not enforce such order unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S. All moneys due and owing pursuant to this paragraph (b) shall be payable to the department for the payment and reimbursement of enforcement and costs associated with such enforcement and are hereby continuously appropriated to the department for such purpose.

(2) If the commissioner is unable to collect a civil penalty, payment of costs imposed pursuant to subsection (1) of this section, or if the person fails to pay all or a specified portion of such penalty or payment, the department may bring suit in any court of competent jurisdiction to recover such amount plus costs and attorney fees.

(3) Before imposing any civil penalty or payment of costs, the commissioner may consider the effect of such penalty or payment of costs on the ability of the person charged to stay in business.

(4) All civil penalties and payment of costs collected pursuant to this section shall be deposited in the noxious weed management fund created in section 35-5.5-116.

Source: L. 96: Entire section added, p. 773, § 17, effective May 23. **L. 2003:** Entire section amended, p. 2425, § 5, effective August 6.

35-5.5-119. County funding. The board of county commissioners is authorized to levy a special tax, subject to the approval of the voters, upon every dollar of valuation of assessment of taxable property within the county for the purpose of creating a county fund to control noxious weeds; except that the amount raised from such levy in any one year shall not exceed the amount raised by five mills.

Source: L. 96: Entire section added, p. 773, § 17, effective May 23.

ARTICLE 6

Pest and Plant Quarantine

35-6-101 to 35-6-108. (Repealed)

Source: L. 85: Entire article repealed, p. 1135, § 15, effective May 16.

Editor’s note: This article was numbered as article 11 of chapter 6, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning the quarantine and control of pests, see §§ 35-4-110 and 35-4-110.5.

ARTICLE 7

Rodents and Predatory Animals - Control

PART 1		35-7-110.	State reimbursed for actual cost.
RODENT CONTROL		35-7-111.	County to appropriate funds.
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35-7-103.	Rodent pest control fund - creation.	35-7-115.	Enforcing collection - hearing.
35-7-104.	Cooperative agreements.	35-7-116.	Collections paid to treasurer.
35-7-105.	Boundaries of infested areas defined.	35-7-117.	Record of poison purchased.
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35-7-107.	Land under contract of purchase.	RODENTS AND PREDATORY ANIMALS	
35-7-108.	Private lands.	35-7-201.	Control and eradication of rodents.
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35-7-202. Control and eradication of predatory animals. 35-7-203. Release of destructive rodent pests - definitions.

PART 1

RODENT CONTROL

35-7-101. Legislative declaration. Whereas, in many large areas of this state certain destructive rodent pests, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, and rats, have become so numerous and such a grave and immediate menace to the agricultural, horticultural, and livestock industries of the state that large numbers of the inhabitants engaged in such industries in the localities so infested are in great and imminent danger of being impoverished and reduced to want by the destruction of their crops; and, whereas, the situation is so serious and the emergency so urgent that public necessity demands that prompt, efficacious, and summary action be taken under the police power of the state to control, suppress, and eradicate the rodents in the areas infested by them; now, therefore, it is declared that in all fields, orchards, places, localities, and areas in the state infested with any such rodents in sufficient numbers as to materially injure agricultural or horticultural crops therein, such infestation is a public nuisance and subject to suppression and abatement as such under the provisions of this part 1.

Source: L. 27: p. 616, § 1. CSA: C. 5, § 44. CRS 53: § 6-7-1. C.R.S. 1963: § 6-7-1.

35-7-102. Agreement with the federal government. To the end that the situation may be speedily remedied, it is the duty of the department of agriculture, referred to in this part 1 as the "department", to enter into written agreements on behalf of the state with the federal agency in charge of rodent control matters, referred to in this article as the "federal agency", such agreements to define such procedure, in accordance with the provisions of this part 1, as they deem advisable and proper for the purpose of cooperating with the federal agency in the control and eradication within this state of the rodent pests mentioned in section 35-7-101.

Source: L. 27: p. 617, § 2. CSA: C. 5, § 45. L. 39: p. 210, § 1. CRS 53: § 6-7-2. C.R.S. 1963: § 6-7-2. L. 2002: Entire section amended, p. 1030, § 58, effective June 1.

35-7-103. Rodent pest control fund - creation. (1) For the purpose of carrying out the provisions of this part 1, there is hereby created the rodent pest control fund. To insure continuity of contractual relations with the federal agency, said fund shall be permanent, and the same, together with all appropriations and all reimbursements or accretions thereto, from whatever source derived, is appropriated to carry out the purposes of this part 1.

(2) All disbursements from the fund shall be by warrants drawn by the controller upon itemized vouchers certified by the federal agency as to correctness and approved by the department which shall approve the vouchers for all lawful expenses incurred in carrying out the purposes of this part 1 and in accordance with the terms of any cooperative agreements entered into by the department with the federal agency.

Source: L. 27: p. 617, § 3. L. 31: p. 708, § 1. CSA: C. 5, § 46. L. 39: p. 210, § 2. CRS 53: § 6-7-3. C.R.S. 1963: § 6-7-3. L. 2002: Entire section amended, p. 1030, § 59, effective June 1.

35-7-104. Cooperative agreements. Operations under the provisions of this part 1 for the control and eradication of rodent pests shall be in accordance with the approved procedure of the federal agency and in accordance with the terms of such agreements as shall be entered into by the department and the federal agency. To enable the department to carry out any such agreement or to perform the duties devolved upon the department in carrying out the purpose of this part 1, the department is authorized to enlist and pay the

necessary expenses of volunteer agents and to employ and pay the salary and necessary expenses of such other agents as may be required to act in their behalf. To further enlarge and accelerate operation for the control of such rodent pests, the department, acting in conjunction with the federal agency, may enter into cooperative agreements with boards of county commissioners or with associations, corporations, or individuals owning land subject to or menaced by such infestations.

Source: L. 27: p. 618, § 4. CSA: C. 5, § 47. CRS 53: § 6-7-4. C.R.S. 1963: § 6-7-4. L. 2002: Entire section amended, p. 1030, § 60, effective June 1.

35-7-105. Boundaries of infested areas defined. For the purpose of carrying out this part 1, the respective boards of county commissioners have the power to define the boundaries of such rodent-infested areas within their jurisdictions and to put into operation such cooperative agreements for such areas in the manner as in their discretion may be deemed advisable.

Source: L. 31: p. 709, § 2. CSA: C. 5, § 48. CRS 53: § 6-7-5. C.R.S. 1963: § 6-7-5.

35-7-106. Government lands. On lands which are a part of any national forest, Indian reservation, or other national reserve or public domain of the United States, or of any state reservation, or of any unoccupied or leased state lands, the control of such rodent pests shall be carried on so far as possible at the expense of the federal government on federal lands and at the expense of the state government on unoccupied or leased state lands with such cooperation with occupants, lessees, licensees, or adjacent landowners as may be available.

Source: L. 27: p. 618, § 5. CSA: C. 5, § 49. CRS 53: § 6-7-6. C.R.S. 1963: § 6-7-6.

35-7-107. Land under contract of purchase. On state land sold under contract of purchase whereunder patent has not been issued, the control shall be prosecuted, so far as possible, on a cooperative basis, pursuant to such terms as may be agreed upon with the contract holder.

Source: L. 27: p. 619, § 6. CSA: C. 5, § 50. CRS 53: § 6-7-7. C.R.S. 1963: § 6-7-7.

35-7-108. Private lands. Upon privately owned lands, the control of rodent pests under this part 1 shall, so far as possible, be based on voluntary cooperation of owners, lessees, or occupants. If a private landowner enters into a cooperative agreement with the county pursuant to which the county agrees to control rodent pests on the landowner's real property, the private landowner shall reimburse the county for actual expenses incurred by the county in connection with such rodent pests control operations.

Source: L. 27: p. 619, § 7. CSA: C. 5, § 51. CRS 53: § 6-7-8. C.R.S. 1963: § 6-7-8. L. 2011: Entire section amended, (HB 11-1087), ch. 19, p. 48, § 1, effective August 10.

35-7-109. Agreements with landowners. Owners of private lands may arrange, under written cooperative agreements with the department and the federal agency in charge of operations, for the control and eradication of rodent pests on their lands.

Source: L. 27: p. 619, § 8. CSA: C. 5, § 52. CRS 53: § 6-7-9. C.R.S. 1963: § 6-7-9. L. 2002: Entire section amended, p. 1030, § 61, effective June 1.

35-7-110. State reimbursed for actual cost. All poisons or other materials for such control furnished by the state to such cooperators shall be supplied at actual cost, and the state shall be reimbursed by such cooperators, landowners, lessees, or contract holders for the actual cost of materials and labor, other than supervision, expended by the state in such

treatment under cooperative agreements with them. Such reimbursement shall be made by each owner, lessee, or contract holder in the proportion that the number of acres of land treated for him or her bears to the total acreage treated in the area designated for treatment or according to such equitable proportion or plan as shall be provided for in the agreement. Any such agreement shall require full reimbursement to be made to the state within thirty days after presentation by the department, or its agents, of an itemized account therefor.

Source: L. 27: p. 619, § 9. CSA: C. 5, § 53. CRS 53: § 6-7-10. C.R.S. 1963: § 6-7-10. L. 2011: Entire section amended, (HB 11-1087), ch. 19, p. 48, § 2, effective August 10.

35-7-111. County to appropriate funds. It is the duty of boards of county commissioners in all counties where any such infestation exists or is imminent to appropriate from the general fund such money as may be necessary to carry out the provisions of this part 1 within their respective counties. In counties where pest control districts have been created, or are about to be created, it is the duty of the board of county commissioners to appropriate from the county general fund such money as shall be necessary to establish and maintain a fund for the payment of all accounts charged or chargeable against them under the terms of this part 1.

Source: L. 29: p. 566, § 2. CSA: C. 5, § 54. L. 51: p. 296, § 8. CRS 53: § 6-7-11. C.R.S. 1963: § 6-7-11.

35-7-112. Eradication contracts required - procedure without contracts. (1) In case a majority of resident landowners in a prescribed district have signed a cooperative agreement to destroy rodents on their lands, public notice may be given by publication by the boards of county commissioners wherein the lands are located at least once in a newspaper of general circulation in the counties affected to the effect that lands within the boundaries of such prescribed area, lying in one or more counties, are infested by said pests, or some kind thereof, in such numbers that in the opinion of the said department the same are liable to materially injure and imperil agricultural or horticultural crops within such area, and that such lands are about to be treated, under the provisions of this part 1, for the control and eradication of the pests. If, within thirty days after the publication of such notice, any owner of lands infested by the pests within the prescribed area fails to destroy the same, or to enter into a cooperative agreement for their control or eradication, then, at the time operations are instituted on such lands, it is the duty of the department, or its agents, to enter upon the lands and to destroy the pests thereon at the expense of the owner of such lands.

(2) If the owner, after ten days' written notice to him in person or by mail to his last known post office address, fails, neglects, or refuses to reimburse the department, or its agents, in the amount of such expenses, the department shall certify an itemized statement thereof, together with a description of such lands sufficient to identify the same to the board of county commissioners of the county wherein the same is situated. Thereupon, such an account shall be audited, allowed, and paid in like manner as provided in section 35-7-110. Public notices in this section provided for shall designate as accurately as may be the boundaries of the area to be treated; shall make specific reference to this statute and shall call upon all owners, known or unknown, of lands within the prescribed area to proceed at once to destroy the pests mentioned in such notice or to enter into cooperative agreements for their control or eradication; and shall designate reasonable times and places within or near such area where and when the federal agency, or other agents, and the department, or its agents, will be present for the purpose of entering into such cooperative agreements and proceeding with their execution.

Source: L. 27: p. 620, § 11. L. 31: p. 709, § 3. CSA: C. 5, § 55. CRS 53: § 6-7-12. C.R.S. 1963: § 6-7-12. L. 2002: (2) amended, p. 1031, § 62, effective June 1.

35-7-113. Itemized accounts. The department shall keep itemized accounts of the actual expenses of materials and labor in connection with the control and eradication of rodent pests, whether such work is done under cooperative agreements with owners, lessees, or contract holders or otherwise.

Source: L. 27: p. 622, § 12. CSA: C. 5, § 56. CRS 53: § 6-7-13. C.R.S. 1963: § 6-7-13.

35-7-114. Charges against landowner - lien rights. Whenever any county has been required to pay any expense charged against any landowners, under a cooperative agreement or otherwise, on account of such pest control operations conducted upon or for the benefit of his or her lands, such county shall have a lien upon such lands for the amount so paid or for such lesser amount as such landowner shall be adjudged to pay after a hearing before the board of county commissioners.

Source: L. 27: p. 622, § 13. CSA: C. 5, § 57. CRS 53: § 6-7-14. C.R.S. 1963: § 6-7-14. L. 2011: Entire section amended, (HB 11-1087), ch. 19, p. 49, § 3, effective August 10.

35-7-115. Enforcing collection - hearing. Upon payment by any county of any such bill of expenses so charged against any landowner, lessee, or contract holder, the board of county commissioners shall make demand and notice in writing, upon such landowner, lessee, or contract holder, in person or by mail addressed to him or her at his or her last known place of residence twenty days prior to the published meeting date, for reimbursement to the county in the amount of such expenses. Such written notice shall inform such person that he or she may appear before the board on the published meeting date and be heard as to the amount and accuracy of the claim. If such claim, as originally demanded by the board or as adjusted upon the hearing, is not paid, then, in the case of a private landowner, the board of county commissioners shall certify the claim to the county assessor who shall add the amount thereof to any taxes due or to become due upon his or her lands, and said lands shall be sold for the satisfaction thereof at the same time and in the same manner as is provided by law for the sale of real estate for delinquent taxes. In cases where such accounts are payable by a lessee or contract holder, suit may be maintained in behalf of the county in any court of competent jurisdiction for the recovery of such accounts and costs of suit. All such accounts when collected by the county shall be paid into the general fund thereof or into the fund used by the county to meet its obligations under this part 1.

Source: L. 31: p. 711, § 4. CSA: C. 5, § 58. CRS 53: § 6-7-15. C.R.S. 1963: § 6-7-15. L. 2011: Entire section amended, (HB 11-1087), ch. 19, p. 49, § 4, effective August 10.

Cross references: For the sale of real estate for delinquent taxes, see article 11 of title 39.

35-7-116. Collections paid to treasurer. All reimbursements to the state, whether made by individuals, counties, or other cooperators pursuant to this part 1, shall be turned over to the state treasurer and by him credited to the rodent pest control fund referred to in section 35-7-103.

Source: L. 27: p. 623, § 15. CSA: C. 5, § 59. L. 39: p. 211, § 3. CRS 53: § 6-7-16. C.R.S. 1963: § 6-7-16.

35-7-117. Record of poison purchased. The department, when acting in cooperation with the federal agency in rodent control operations through its officers, members, or authorized agents, may purchase and sell to landowners, lessees, contract holders, boards of county commissioners, and other cooperators strychnine and other poisons and supplies for

rodent control. The department or its agents shall make and keep a record of all such sales made by showing the name and address of purchaser, date of purchase, and kind and amount of poison or rodent supplies purchased.

Source: L. 27: p. 623, § 16. **CSA:** C. 5, § 60. **L. 39:** p. 211, § 4. **CRS 53:** § 6-7-17. **C.R.S. 1963:** § 6-7-17. **L. 2002:** Entire section amended, p. 1031, § 63, effective June 1.

PART 2

RODENTS AND PREDATORY ANIMALS

35-7-201. Control and eradication of rodents. (1) The boards of county commissioners of the several counties of this state are authorized to purchase materials and equipment and to employ one or more suitable persons to destroy jackrabbits, prairie dogs, ground squirrels, or other injurious rodents within the limits of their respective counties. Any materials and equipment so purchased and compensation for such services shall be paid out of the general fund or a specially designated fund of such county.

(2) The boards of county commissioners of the several counties of this state are authorized to levy such taxes as are necessary to pay the obligations for rodent control work as authorized under this section and to put into operation any plan of procedure for the eradication of such rodent pests within their jurisdictions as in their discretion is deemed advisable; except that control operations under the provisions of this section shall be in accordance with the approved procedure of the federal agency. The boards of county commissioners may solicit cooperation from the state board of stock inspection commissioners and the federal agency for the conduct of such rodent control work and may enter into cooperative agreements with the board of stock inspection commissioners and the federal agency for the furtherance of the rodent control work authorized under this section.

Source: L. 37: p. 1073, §§ 1, 2. **CSA:** C. 45, § 38(1). **CRS 53:** § 36-13-1. **C.R.S. 1963:** § 36-13-1. **L. 2002:** (2) amended, p. 1031, § 64, effective June 1. **L. 2011:** (1) amended, (HB 11-1087), ch. 19, p. 49, § 5, effective August 10.

35-7-202. Control and eradication of predatory animals. (1) The boards of county commissioners of the several counties of the state are authorized to purchase materials and equipment and to employ one or more suitable persons to control coyotes or other injurious predatory animals within the limits of their respective counties. Any materials and equipment so purchased and compensation for such services shall be paid out of the general fund or a specially designated fund of such county.

(2) The boards of county commissioners of the several counties of the state are authorized to levy such taxes as are necessary to pay the obligations for such predatory animal control work as authorized by this section and to put into operation any plan of procedure for the eradication of such predatory animals within their jurisdictions as in their discretion is deemed advisable.

(3) Control operations under the provisions of this section shall be in accordance with the approved procedure of the federal agency. The boards of county commissioners may solicit cooperation from the state board of stock inspection commissioners and the federal agency for the conduct of such predatory animal control work and may enter into cooperative agreements with the state board of stock inspection commissioners and the federal agency for the furtherance of the predatory animal control work authorized under this section.

Source: L. 47: p. 369, §§ 1, 2. **CSA:** C. 45, § 38(2). **CRS 53:** § 36-13-2. **C.R.S. 1963:** § 36-13-2. **L. 2000:** (1) amended, p. 1395, § 2, effective July 1. **L. 2002:** (3) amended, p. 1031, § 65, effective June 1.

Cross references: For control of predatory animals generally, see article 40 of this title.

35-7-203. Release of destructive rodent pests - definitions. (1) No person shall release destructive rodent pests into a county unless the person complies with all requirements for such release imposed by the parks and wildlife commission and obtains both the prior approval of the commission and the prior approval, by resolution duly adopted, of the board of county commissioners of such county. A person need not obtain such prior approval before:

(a) Transporting destructive rodent pests through a county without releasing such destructive rodent pests; or

(b) Confining destructive rodent pests indoors or in cages or similar enclosures and using such destructive rodent pests for scientific purposes or as food for human or animal consumption; or

(c) Keeping destructive rodent pests indoors or in cages or similar enclosures as pets; or

(d) Releasing destructive rodent pests into the county in which such destructive rodent pests were originally taken into captivity.

(2) For purposes of this section, "destructive rodent pests" means one or more rodents, including but not limited to prairie dogs, ground squirrels, pocket gophers, jackrabbits, and rats, that pose a threat to agricultural, horticultural, or livestock concerns or to human health.

(3) The board of county commissioners of any county into which a person releases destructive rodent pests without the prior approval of such board may, at its discretion:

(a) Require the person who released the destructive rodent pests to eradicate the destructive rodent pests or remove the destructive rodent pests from the county; or

(b) Impose a fine upon the person who released the destructive rodent pests in an amount sufficient to compensate the county for the cost of eradicating the destructive rodent pests or removing the destructive rodent pests from the county.

Source: L. 99: Entire section added, p. 155, § 1, effective March 25. L. 2012: IP(1) amended, (HB 12-1317), ch. 248, p. 1236, § 93, effective June 4.

Cross references: For the wildlife commission, renamed the parks and wildlife board in Senate Bill 11-208, see §§ 33-1-102 and 33-9-101.

ARTICLE 8

Weeds

35-8-101 to 35-8-107. (Repealed)

Source: L. 77: Entire article repealed, p. 293, § 10, effective May 26.

Editor's note: This article was numbered as article 9 of chapter 6, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 9

Pesticide Act

Editor's note: This article was numbered as article 12 of chapter 6, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For exemption of substances regulated by this act from the “Colorado Hazardous Substances Act of 1973”, see § 25-5-502 (10)(c); for regulations governing the commercial application of pesticides, see article 10 of this title.

35-9-101.	Short title.	35-9-115.	Pesticide dealer license - requirements - application - fees - expiration.
35-9-102.	Legislative declaration.	35-9-116.	Renewal of pesticide dealer license.
35-9-103.	Definitions.	35-9-117.	Dealer and refiller records and reports - rules.
35-9-104.	Exemptions.	35-9-117.5.	Refillable container residue removal requirements - rules.
35-9-105.	Exclusive jurisdiction.	35-9-118.	Powers and duties of the commissioner - rules.
35-9-106.	Pesticide registration required - exemptions.	35-9-119.	Investigations - access - subpoena.
35-9-107.	Pesticide registration - application - fees - expiration - rules.	35-9-120.	Prohibited acts.
35-9-108.	Registration - review and evaluation - criteria - state limited-use or restricted-use pesticide - cancellation - summary suspension.	35-9-121.	Enforcement.
35-9-109.	Confidentiality of inert ingredients.	35-9-122.	Denial - suspension - revocation.
35-9-110.	Device registration - required.	35-9-123.	Embargo.
35-9-111.	Device registration - application - fees - expiration - rules.	35-9-124.	Civil penalties.
35-9-112.	Renewal of pesticide and device registration.	35-9-125.	Criminal penalties.
35-9-113.	Misbranded.	35-9-126.	Pesticide fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.
35-9-114.	Pesticide dealer license - required.	35-9-127.	Advisory committee.
		35-9-128.	Information.

35-9-101. Short title. This article shall be known and may be cited as the “Pesticide Act”.

Source: L. 90: Entire article R&RE, p. 1559, § 1, effective June 7.

Editor’s note: This section is similar to former § 35-9-101 as it existed prior to 1990.

35-9-102. Legislative declaration. The general assembly hereby finds and declares that the intent of this article is to regulate, in the public interest, the refilling, registration, labeling, transportation, distribution, storage, use, and disposal of any pesticide and of certain devices. The general assembly further finds and declares that it is the intent of this article to assure the dissemination of accurate information regarding the proper and prohibited uses of any pesticide or device. The provisions of this article are enacted to protect the public health, safety, and welfare of the people of this state.

Source: L. 90: Entire article R&RE, p. 1559, § 1, effective June 7. L. 2010: Entire section amended, (SB 10-034), ch. 376, p. 1766, § 1, effective July 1.

35-9-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Active ingredient” means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(b) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" refers to:

(a) Any pesticide whose strength or purity deviates from the professed strength or purity stated on its labeling or under which it is sold; or

(b) Any pesticide whose components or their relative proportions differ from those stated on its labeling; or

(c) Any substance which has been substituted wholly or in part for a pesticide; or

(d) Any pesticide from which any valuable constituent has been wholly or partly abstracted; or

(e) Any pesticide in which any contaminant is present in an amount which is determined by the commissioner to be a hazard.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Dealer" means any person who distributes to any other person any restricted-use pesticide.

(5) "Device" means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.

(6) "Distribute" means to advertise, offer for sale, hold for sale, sell, barter, or supply in any fashion any pesticide in this state.

(7) "EPA" means the environmental protection agency.

(8) "Inert ingredient" means an ingredient which is not active.

(9) "Limited-use pesticide" refers to any pesticide so designated by the commissioner.

(10) "Pest" means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.

(11) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.

(11.4) "Refill" means to transfer a pesticide for sale or distribution to a refillable container without changing the composition, formulation, or EPA registration number of the pesticide.

(11.5) "Refillable container" means a container that is intended to be filled more than once with a pesticide for sale or distribution.

(11.6) "Refiller" means a person that engages in refilling.

(12) "Restricted-use pesticide" means any pesticide designated as a restricted-use pesticide by the commissioner or the administrator of the environmental protection agency.

Source: L. 90: Entire article R&RE, p. 1559, § 1, effective June 7. L. 2010: (11.4), (11.5), and (11.6) added, (SB 10-034), ch. 376, p. 1766, § 2, effective July 1.

Editor's note: This section is similar to former § 35-9-102 as it existed prior to 1990.

35-9-104. Exemptions. (1) The provisions of this article shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide or device within this state, if such carrier, upon request, permits the department of agriculture or its designated agent to copy all records showing the transactions regarding and the movement of the pesticide or device;

(b) Public officials of this state and the federal government engaged in the performance of their official duties except as specifically required by this article; or

(c) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of any agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

(2) No pesticide or device shall be deemed in violation of this article when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all provisions of this article shall apply.

Source: L. 90: Entire article R&RE, p. 1561, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-108 as it existed prior to 1990.

35-9-105. Exclusive jurisdiction. Jurisdiction in all matters pertaining to the distribution and sale of pesticides and devices, including removal of pesticide residue from containers prior to refilling or disposal, is vested exclusively in the department of agriculture.

Source: L. 90: Entire article R&RE, p. 1561, § 1, effective June 7. **L. 2010:** Entire section amended, (SB 10-034), ch. 376, p. 1767, § 3, effective July 1.

Editor's note: This section is similar to former § 35-9-113 as it existed prior to 1990.

35-9-106. Pesticide registration required - exemptions. (1) Except as provided in subsection (2) of this section, every pesticide that is distributed in this state shall be registered with the commissioner as provided by this article and any rules adopted under this article.

(2) The commissioner may exempt certain pesticides from the registration requirement consistent with the "Federal Insecticide, Fungicide, and Rodenticide Act", 7 U.S.C. sec. 136 et seq., as amended, and rules promulgated by the EPA under the "Federal Insecticide, Fungicide, and Rodenticide Act".

Source: L. 90: Entire article R&RE, p. 1561, § 1, effective June 7. **L. 2010:** Entire section amended, (SB 10-034), ch. 376, p. 1767, § 4, effective July 1.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-107. Pesticide registration - application - fees - expiration - rules. (1) Each applicant for registration of a pesticide shall file with the commissioner, in the form and manner the commissioner shall designate:

(a) The name and address of the applicant and, if it is different, the name and address of the person whose name will appear on the pesticide label;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for its use, including directions and precautions for use;

(d) A complete statement of each active ingredient and its percentage of the whole and, if requested by the commissioner, each inert ingredient and its percentage of the whole, which inert ingredient information shall be kept confidential as provided in section 35-9-109;

(e) If requested by the commissioner, a full description of all tests made and the results thereof, including, but not limited to, efficacy and hazard data upon which the claims are based;

(f) If requested by the commissioner, analytical standards and methods of analysis for each formulation of said pesticide and analytical methods for determining any residues of said pesticide at levels suspected harmful to plants, animals, or the environment; and

(g) Any other information required by the commissioner.

(2) Each applicant shall pay, at the time the application is submitted, an annual application fee in an amount to be determined by the commissioner.

(3) Repealed.

(4) (a) Repealed.

(b) On and after January 1, 2011, registration of a pesticide shall expire each year on a date specified by the commissioner by rule.

Source: L. 90: Entire article R&RE, p. 1561, § 1, effective June 7. **L. 2010:** IP(1), (1)(d), and (4) amended and (3) repealed, (SB 10-034), ch. 376, p. 1767, §§ 5, 6, effective July 1.

Editor's note: (1) This section is similar to former § 35-9-104 as it existed prior to 1990.

(2) Subsection (4)(a)(II) provided for the repeal of subsection (4)(a), effective January 1, 2011. (See L. 2010, p. 1767.)

35-9-108. Registration - review and evaluation - criteria - state limited-use or restricted-use pesticide - cancellation - summary suspension. (1) The commissioner shall review the information provided with respect to each pesticide to determine if it meets the claims made for it and if the pesticide and its labeling and other materials comply with the provisions of this article and the rules and regulations adopted pursuant thereto.

(2) If the commissioner determines that the pesticide, labeling, or any other materials submitted with the application do not comply with the provisions of this article, he shall notify the applicant of the particulars in which there is a lack of compliance.

(3) The commissioner shall not register the pesticide until the applicant has made the necessary corrections or amendments as specified in the notice. The applicant may request a hearing to appeal an adverse determination pursuant to section 24-4-104, C.R.S.

(4) The commissioner shall consider the following criteria to determine if a pesticide qualifies for registration:

(a) Its composition is such as to warrant the proposed claims for it;

(b) When used in accordance with generally accepted practices, it will not cause unacceptable, adverse effects on the environment;

(c) Its labeling and any other material required to be submitted pursuant to section 35-9-107 comply with the provisions of this article and any rules and regulations adopted pursuant thereto.

(5) The commissioner, in his discretion, may, at the time of registration, designate the pesticide as a state restricted-use or limited-use pesticide and may restrict or limit the distribution or use of such pesticide. The commissioner may include in said restriction the time and conditions under which the pesticide may be distributed or used and may impose any or all of the following additional requirements:

(a) The pesticide shall be purchased, possessed, or used only under permit of the commissioner;

(b) The pesticide shall be purchased, possessed, or used only under the supervision of the commissioner; and

(c) The permittee shall maintain records as to the use of such pesticide in the form and manner the commissioner shall designate.

(6) After a pesticide is registered, the commissioner may cancel the registration of said pesticide pending notice and an opportunity for hearing if he determines that:

(a) The pesticide or its labeling or packaging does not comply with the provisions of this article or any rules or regulations adopted thereunder; or

(b) The pesticide registration has been cancelled or suspended by the EPA.

(7) If the commissioner has reasonable grounds to believe and finds that the registrant has been guilty of deliberate and willful violation of use or distribution restrictions imposed

pursuant to this article or that the public health, safety, or welfare imperatively requires emergency action, he may summarily suspend the registration pending proceedings for suspension or cancellation of the registration.

Source: L. 90: Entire article R&RE, p. 1562, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-109. Confidentiality of inert ingredients. (1) Except as provided by this section, no inert ingredient information required by section 35-9-107 (1) (d) shall be released to any person by the commissioner.

(2) A registrant may authorize the commissioner to disclose any inert ingredient information required by section 35-9-107 by filing a signed authorization for release of information with the commissioner.

(3) When a treating physician or the poison control service provider selected pursuant to section 25-32-105, C.R.S., determines that a medical emergency exists and information submitted to the commissioner concerning inert ingredients pursuant to section 35-9-107 (1) (d) is necessary for emergency or first-aid treatment, the commissioner may immediately disclose the information necessary to that treating physician or to such poison control service provider. The commissioner shall require such treating physician or such poison control service provider to submit to the commissioner a statement of need for the information and a confidentiality agreement, in the form and manner the commissioner shall designate, as soon as circumstances permit.

(4) If the treating physician or the poison control service provider, after receiving confidential information regarding a pesticide, determines that there is a need to disclose the information to another health professional, including a physician or a toxicologist, due to an immediate health emergency, whether public or individual, the treating physician or the poison control service provider shall so inform the commissioner. The commissioner shall require confidentiality from any such health professional to whom the confidential information is disclosed.

Source: L. 90: Entire article R&RE, p. 1563, § 1, effective June 7. L. 94: (3) and (4) amended, p. 1669, § 5, effective July 1, 1995. L. 2003: (3) amended, p. 2001, § 62, effective May 22. L. 2010: (1), (2), and (3) amended, (SB 10-034), ch. 376, p. 1768, § 7, effective July 1.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-110. Device registration - required. (1) Every device which is sold in this state and which is subject to the provisions of this article shall be registered with the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner shall designate the classes of devices which are subject to this article.

Source: L. 90: Entire article R&RE, p. 1563, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-111. Device registration - application - fees - expiration - rules. (1) Each applicant for registration of a device shall file with the commissioner, in the form and manner he shall designate:

(a) The name and address of the applicant and, if different, the name and address of the person whose name will appear on the device;

(b) The name of the device;

- (c) A complete copy of the labeling accompanying the device, including its packaging, directions, and precautions for use, and a statement of all claims being made for the device;
- (d) If requested by the commissioner, a complete description of all tests made and the results thereof, including, but not limited to, efficiency and hazard data upon which the claims are based; and
- (e) Any other information required by the commissioner.
- (2) Each applicant shall pay, at the time the application is submitted, an annual application fee in an amount to be determined by the commissioner.
- (3) Repealed.
- (4) (a) Repealed.
- (b) On and after January 1, 2011, registration of a device shall expire each year on a date specified by the commissioner by rule.

Source: **L. 90:** Entire article R&RE, p. 1564, § 1, effective June 7. **L. 2010:** (3) repealed and (4) amended, (SB 10-034), ch. 376, p. 1768, §§ 8, 9, effective July 1.

Editor's note: (1) This section is similar to former § 35-9-104 as it existed prior to 1990.

(2) Subsection (4)(a)(II) provided for the repeal of subsection (4)(a), effective January 1, 2011. (See L. 2010, p. 1768.)

35-9-112. Renewal of pesticide and device registration. (1) A registrant of either a pesticide or a device shall submit a renewal application in the form and manner designated by the commissioner on or before the expiration date of the registration and shall pay a renewal fee in an amount determined by the commissioner.

(2) If an application for renewal of a pesticide or device registration is not received on or before the expiration date of the registration, the registration shall expire. An expired registration may be renewed within two years after the expiration date of the registration upon payment of all late fees and any other penalties or sums assessed pursuant to this article, if the applicant satisfies the commissioner that the requirements of section 35-9-107 have been met.

(3) The commissioner may require the applicant to submit any additional information he deems necessary, including, but not limited to:

(a) A full description of all tests made of the pesticide or device, and the results thereof, including, but not limited to, efficacy and hazard data upon which any claims for the pesticide or device are based; and

(b) With respect to any pesticide, the analytic standards and methods of analysis for each formulation of said pesticide and the analytic methods used to determine any residues of the said pesticide at levels suspected harmful to plants, animals, or the environment.

(4) The commissioner, at the time of such renewal, may, in his discretion, designate any such pesticide as a state restricted-use or limited-use pesticide in the same manner as set forth in section 35-9-108 (5).

Source: **L. 90:** Entire article R&RE, p. 1564, § 1, effective June 7. **L. 2010:** (1) and (2) amended, (SB 10-034), ch. 376, p. 1768, § 10, effective July 1.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-113. Misbranded. (1) The term "misbranded" shall apply:

(a) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) To any pesticide:

(I) If it is an imitation of or is offered for sale under the name of another pesticide;

(II) If its labeling bears any reference to registration under the provisions of this article unless such reference is required by this article or rules or regulations adopted pursuant thereto;

(III) If any word, statement, or other information required by this article or rules adopted under this article to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(IV) If the label does not bear:

(A) The name and address of the manufacturer, registrant, or person for whom manufactured;

(B) The name, brand, or trademark under which the pesticide is sold;

(C) An ingredient statement on that part of the immediate container of the retail package which is presented or displayed under customary conditions of purchase and on the outside container or wrapper thereof, if there is one and if the ingredient statement on the immediate container cannot be clearly read through such outside container or wrapper; except that the commissioner may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(D) Directions for use and a warning or caution statement which are necessary and, if complied with, adequate to protect the public and to prevent injury to the public, including living people, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land;

(E) The weight or measure of the content, subject to the provisions of article 14 of this title; and

(F) Any registration number or establishment number issued by the EPA;

(V) If the pesticide contains any substance or substances in quantities highly toxic to people, unless the label bears, in addition to any other matter required by this article:

(A) The skull and crossbones;

(B) The word "poison" prominently in red on a background of distinctly contrasting color; and

(C) A statement of a practical treatment in case of poisoning by the pesticide;

(VI) If the pesticide container does not bear a label or if the label does not contain all the information required by this article or rules adopted pursuant thereto.

Source: L. 90: Entire article R&RE, p. 1565, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-104 as it existed prior to 1990.

35-9-114. Pesticide dealer license - required. (1) Effective January 1, 1992, any person who acts as a pesticide dealer must possess a valid pesticide dealer license issued by the commissioner in accordance with this article and any rules or regulations adopted pursuant thereto.

(2) Each business location, including branch offices, and each business name must be licensed.

Source: L. 90: Entire article R&RE, p. 1566, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-105 as it existed prior to 1990.

35-9-115. Pesticide dealer license - requirements - application - fees - expiration.

(1) Each applicant for a pesticide dealer license shall make application to the commissioner providing all information in the form and manner the commissioner shall designate.

(2) Each applicant for a pesticide dealer license shall pay a fee in an amount determined by the commissioner.

(3) Each pesticide dealer license shall expire on January 1 of each year.

(4) Each licensee shall report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

Source: L. 90: Entire article R&RE, p. 1566, § 1, effective June 7.

35-9-116. Renewal of pesticide dealer license. (1) Each pesticide dealer shall make an application to renew its license on or before the first working day of January for the year of renewal. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal of any pesticide dealer license is not received on or before the first working day of January for the year of renewal, a penalty fee of ten percent of the license fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If a pesticide dealer license renewal application is not received by February 1 of the renewal year, the license shall not be renewed and the dealer must apply for a new license.

Source: L. 90: Entire article R&RE, p. 1566, § 1, effective June 7. **L. 2010:** (2) and (3) amended, (SB 10-034), ch. 376, p. 1769, § 11, effective July 1.

Editor's note: This section is similar to former § 35-9-105 as it existed prior to 1990.

35-9-117. Dealer and refiller records and reports - rules. (1) Licensed pesticide dealers shall keep records of designated sales in the form and manner designated by the commissioner.

(2) Such records shall be kept at the address designated on the license application or on a change report as required by section 35-9-115 (4) for a period of two years from the date of the sale of such pesticide.

(3) Licensees shall submit such additional reports as may be required by the commissioner.

(4) Refillers shall keep and maintain records in the form and manner specified by the commissioner by rule.

Source: L. 90: Entire article R&RE, p. 1566, § 1, effective June 7. **L. 2010:** (4) added, (SB 10-034), ch. 376, p. 1769, § 12, effective July 1.

35-9-117.5. Refillable container residue removal requirements - rules. A refiller shall comply with refillable container residue removal requirements established by the commissioner by rule.

Source: L. 2010: Entire section added, (SB 10-034), ch. 376, p. 1769, § 13, effective July 1.

35-9-118. Powers and duties of the commissioner - rules. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) Declaring to be a pest any form of plant or animal life or virus which is injurious to plants, animals, or persons, or to land or any inanimate objects, or to the environment;

(b) Determining that certain pesticides are highly toxic to people; except that, in making this determination, the commissioner shall be guided by the criteria set forth in 40 CFR 156.62, as amended;

(c) (I) Adopting a list of restricted use pesticides or limited use pesticides for the state or designated areas within this state if the commissioner determines that such pesticides require rules restricting their distribution or use. The commissioner may include in the rule

the time and conditions of distribution or use of such restricted use or limited use pesticides and may require that any such pesticide be purchased, possessed, or used only under permit of the commissioner and under his supervision. The commissioner may require all persons issued such permits to maintain records regarding the use of such pesticides.

(II) Nothing in this paragraph (c) shall require the commissioner to adopt a list of pesticides which are registered by the EPA pursuant to section 18 or 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended, or are restricted by the EPA pursuant to section 3 of said act.

(d) Determining standards for denaturing any pesticides, including, but not limited to, any arsenicals, fluorides, or fluosilicates by color, taste, odor, or form;

(e) The collection and examination of samples of pesticides or devices;

(f) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers; except that, with respect to the adoption of rules or regulations concerning the transportation of pesticides or the disposal of pesticides and their containers, such rules shall be promulgated in concert with, and shall not be duplicative of, rules adopted by the department of transportation and the department of public health and environment, respectively;

(g) Restricting or prohibiting the use of certain types or sizes of containers or packages for specific pesticides; except that the commissioner shall be guided by federal regulations concerning pesticide containers;

(h) Determining labeling requirements for all pesticides required to be registered under the provisions of this article and any rules or regulations adopted pursuant thereto;

(i) Classifying or subclassifying any pesticide registration, device registration, or pesticide dealer license.

(2.5) (a) The commissioner shall expedite, to the extent practicable and efficient, the processing of applications for the issuance of a special local needs registration made pursuant to section 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended.

(b) Notwithstanding section 35-9-113 (1) (b) (IV) (D), the commissioner shall not deny registration of a pesticide product pursuant to this article for which a special local needs registration has been issued pursuant to section 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended, for the reason that a contract between a grower or grower's group and a manufacturer or seller includes contractual provisions limiting liability of the manufacturer or seller.

(3) (a) The commissioner shall promulgate rules, pursuant to article 4 of title 24, C.R.S., to determine the annual registration fee for each pesticide registered. For the purpose of funding the department of agriculture's groundwater protection efforts, any such fee shall include an increment as approved by the agricultural commission, which increment, along with the remainder of the fee, shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(b) The commissioner shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., to determine the amount of any licensing, renewal, or penalty fee authorized under this article.

(4) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivisions of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal registration and licensing agreements.

(4.5) Repealed.

(5) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(6) The commissioner is authorized to conduct hearings required under sections 35-9-121 and 35-9-122 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

Source: **L. 90:** Entire article R&RE, p. 1567, § 1, effective June 7. **L. 91:** (2)(f) amended, p. 1074, § 57, effective July 1. **L. 94:** (3)(a) amended, p. 1644, § 75, effective May 31; (2)(f) amended, p. 2804, § 572, effective July 1. **L. 98:** (2.5) added, p. 721, § 2, effective May 18; (3)(a) amended, p. 1341, § 63, effective June 1. **L. 99:** (4.5) added, p. 1324, § 4, effective July 1. **L. 2004:** (4.5) amended, p. 1044, § 13, effective July 1. **L. 2005:** (3)(a) amended, p. 1268, § 4, effective July 1. **L. 2008:** (4.5) repealed, p. 1625, § 3, effective August 5. **L. 2009:** (3)(a) amended, (HB 09-1249), ch. 87, p. 316, § 4, effective July 1. **L. 2010:** IP(2) and (2)(b) amended, (SB 10-034), ch. 376, p. 1769, § 14, effective July 1.

Editor's note: This section is similar to former §§ 35-9-104, 35-9-105, and 35-9-106 as they existed prior to 1990.

Cross references: (1) For the "Federal Insecticide, Fungicide, and Rodenticide Act", see Pub.L. 92-516, codified at 7 U.S.C. § 136 et seq.; for provisions concerning administrative law judges, see part 10 of article 30 of title 24.

(2) For the legislative declaration contained in the 1999 act enacting subsection (4.5), see section 1 of chapter 318, Session Laws of Colorado 1999.

35-9-119. Investigations - access - subpoena. (1) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(2) (a) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(I) To all buildings, yards, warehouses, and storage facilities in which any pesticides are kept, stored, handled, processed, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(II) To all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee or registrant.

Source: **L. 90:** Entire article R&RE, p. 1568, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-107 as it existed prior to 1990.

35-9-120. Prohibited acts. (1) It is unlawful and a violation of this article for any person:

(a) To distribute within the state or deliver for transportation in intrastate commerce or transport between points within this state through any point outside this state any of the following:

(I) Any pesticide or device which has not been registered pursuant to the provisions of this article and any rules and regulations adopted pursuant thereto;

(II) Any pesticide or device if any of the claims made for it or any of the directions for its use or any other labeling differs from the representations made in connection with its registration or reregistration; except that, at the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(III) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container a label bearing the information required in this article and the rules adopted pursuant to this article, and, if there is an outside container or wrapper of such retail package through which the required information cannot be clearly read, there is an additional label on such container or wrapper containing such information;

(IV) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(V) Any pesticide in any container which violates rules adopted pursuant to this article or in any container which is unsafe due to damage;

(b) To distribute any pesticide to any person who is required by law or rules adopted under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered; except that, subject to conditions established by the commissioner, such permit may be obtained immediately prior to sale or delivery from any person so designated by the commissioner;

(c) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this article or rules adopted pursuant thereto, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article or the rules adopted pursuant thereto;

(d) To use or cause to be used any pesticide contrary to the rules and restrictions adopted pursuant to section 35-9-118 (2) (c);

(e) To use for the person's own advantage or to reveal, other than under the authority of section 35-9-109, any information relative to formulas of products acquired by authority of section 35-9-107 (1) (d);

(f) To perform any of the acts or to hold oneself out as being qualified to perform any of the acts for which licensure as a pesticide dealer is required without possessing a valid license to do so;

(g) (I) To make false, misleading, deceptive, or fraudulent representations through any media regarding:

(A) Pesticides or any aspect of their use, including, but not limited to, representations regarding their safety and effectiveness; or

(B) Devices or any aspect of their use, including, but not limited to, representations regarding their safety and effectiveness.

(II) It is a false representation to make claims as to the safety of any pesticide or device or their components or ingredients, including, but not limited to, such claims as "safe", "noninjurious", "harmless", or "nontoxic to humans and pets", with or without such qualifying phrases as "when used as directed" and "when properly applied".

(h) To refuse or neglect to comply with the provisions of this article;

(i) To refuse or neglect to comply with any rule adopted under this article, or any lawful order of the commissioner;

(j) To impersonate any state, county, or city inspector or official;

(j.5) To make a false statement in any invoice, record, report, or application required under this article or any rule promulgated under this article; or

(k) To make any fraudulent statements in any confidentiality agreement authorized pursuant to section 35-9-109 or to violate any of the provisions of said agreement.

(2) It is unlawful and a violation of this article for any pesticide dealer:

(a) To store pesticides in a manner inconsistent with labeling directions, except as provided by law, or in a fraudulent, faulty, unsafe, or negligent manner;

(b) To dispose of empty pesticide containers or unused materials inconsistent with labeling directions or in a negligent or unsafe manner;

- (c) To permit the use of his license by persons to whom the license was not issued;
- (d) To fail to maintain records and file reports as required by this article or rules adopted pursuant thereto;
- (e) To fail to notify the commissioner of any change of address within thirty days after said change of address;
- (f) To make a false statement of fact in any invoice or any record, report, or application required by this article or by any rule adopted pursuant thereto; or
- (g) To sell a pesticide without having an appropriately licensed pest control consultant supervising said sale.

(2.5) It is unlawful and a violation of this article for any refiller:

- (a) To fail to maintain any records or reports required under this article or any rule promulgated under this article;
- (b) To make a false statement of fact in any record or report required by this article or any rule promulgated under this article; or
- (c) To fail to clean a refillable container in accordance with residue removal procedures specified by the commissioner by rule.

(3) Any violation of paragraph (a), (c), (f), or (g) of subsection (1) of this section is a deceptive trade practice and is subject to the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 90: Entire article R&RE, p. 1569, § 1, effective June 7. L. 2010: (1)(j) and (3) amended and (1)(j.5) and (2.5) added, (SB 10-034), ch. 376, pp. 1769, 1770, §§ 15, 16, effective July 1.

Editor's note: This section is similar to former § 35-9-103 as it existed prior to 1990.

ANNOTATION

Subsection (1)(g) and rules 4.2(b)(2) and 6.1(i) of the Colorado department of agriculture regulations violate the first amendment to the U.S. Constitution by prohibiting manufacturer from making true and non-misleading claims on its product labels and in its advertising. *Bioganic Safety Brands, Inc. v. Ament*, 174 F. Supp.2d 1168 (10th Cir. 2001).

Subsection (1)(g) and rules 4.2(b)(2) and 6.1(i) of the Colorado department of agriculture regulations impose an undue burden on interstate commerce and thus violate the dormant commerce clause of the U.S. Constitution by prohibiting manufacturer from making true and non-misleading claims on its product labels and in its advertising. *Bioganic Safety Brands, Inc. v. Ament*, 174 F. Supp.2d 1168 (10th Cir. 2001).

Subsection (1)(g)(II) and rules 4.2(b)(2) and 6.1(i) of the Colorado department of agriculture regulations conflict with § 136v(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which forbids a state to impose requirements for labeling different from those required under FIFRA, and its implementing regulations as to labeling requirements. *Bioganic Safety Brands, Inc. v. Ament*, 174 F. Supp.2d 1168 (10th Cir. 2001).

FIFRA also preempts subsection (1)(g) to the extent that it purports to bar advertising claims that merely repeat claims made on pesticide labels. *Bioganic Safety Brands, Inc. v. Ament*, 174 F. Supp.2d 1168 (10th Cir. 2001).

35-9-121. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) (I) At any time after service of the order to cease and desist, the person may request, at his discretion, an immediate hearing or a hearing not more than ten days,

excluding Saturdays, Sundays, and legal holidays, after such request to determine whether a violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(II) The registrant shall pay a penalty fee of one hundred dollars, in addition to any other assessed penalty, if the commissioner determines that the registrant has violated this article or any rule promulgated under this article after a hearing is held pursuant to subparagraph (I) of this paragraph (b).

(c) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(d) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(e) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(3) Whenever the commissioner possesses evidence satisfactory to him that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule adopted under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 90: Entire article R&RE, p. 1571, § 1, effective June 7. L. 2005: (2)(b) amended, p. 1268, § 5, effective July 1.

Editor's note: This section is similar to former § 35-9-107 as it existed prior to 1990.

35-9-122. Denial - suspension - revocation. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition, or deny, refuse to renew, suspend, or revoke any pesticide or device registration or any pesticide dealer license if the applicant, holder of the registration, or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to conduct regulated by this article;

(c) Has used fraud or deception in the procurement or attempted procurement of any registration or license authorized under this article, or the renewal thereof;

(d) Has failed to comply with a lawful order of the commissioner;

(e) Has had an equivalent registration or license cancelled, denied, revoked, or suspended by any authority;

(f) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that a consent decree entered into with the environmental protection agency shall not be considered a violation of such act unless an order from the regional administrator of the environmental protection agency or the consent decree shall specifically state that a violation has occurred;

(g) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(h) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee or holder of a registration from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) No licensee whose license has been revoked may apply or reapply for a license under this article until two years from the date of such revocation.

Source: L. 90: Entire article R&RE, p. 1571, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-109 as it existed prior to 1990.

Cross references: For the "Federal Insecticide, Fungicide, and Rodenticide Act", see Pub.L. 92-516, codified at 7 U.S.C. § 136 et seq.

35-9-123. Embargo. (1) This section shall apply whenever the commissioner finds or has reasonable cause to believe that any pesticide or device:~

- (a) Is adulterated or misbranded;
- (b) Has not been registered under the provisions of this article;
- (c) Fails to bear on its label the information required by this article; or
- (d) Is in violation of any provision of this article or any rule made pursuant to this article.

(2) If any of the conditions specified in subsection (1) of this section apply, the commissioner may affix to such pesticide or device a tag or other appropriate marking giving notice thereof and stating that the pesticide or device has been detained or embargoed and warning all persons not to remove or dispose of such pesticide or device by sale or otherwise until permission for removal or disposal is given by the commissioner or a court of competent jurisdiction.

(3) Any person who removes or disposes of such detained or embargoed pesticide or device by sale or otherwise, without prior permission, or removes or alters the tag or marking commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition, such person may be subjected to appropriate administrative proceedings.

(4) When a pesticide or device detained or embargoed under subsection (2) of this section has been found by the commissioner to be in violation of any provision of this article or any rule promulgated pursuant to this article and if the violation has not been resolved in thirty days, the commissioner may petition a court of competent jurisdiction for a condemnation of such pesticide or device. When the commissioner has found that a pesticide or device so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(5) If the court finds that a detained or embargoed pesticide or device is in violation of this article or rules adopted thereunder, such pesticide or device shall after entry of the decree be destroyed at the expense of the owner, claimant, or custodian thereof, under the supervision of the commissioner, and all court costs and attorney fees and storage and other proper expenses shall be assessed against the owner, claimant, or custodian of such pesticide or device or his agent. However, if the adulteration or misbranding can be corrected by proper labeling or processing of the pesticide or device, the court, after entry of the decree and after such costs, attorney fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such pesticide or device be delivered to the owner, claimant, or custodian thereof for such labeling or processing under the supervision of the commissioner. The expense of such supervision shall be paid by the owner, claimant, or custodian. The pesticide or device shall be returned to the owner, claimant, or custodian of the pesticide or device on the representation to the court by the commissioner that the pesticide or device is no longer in violation of this article and that the expenses of such supervision have been paid.

Source: L. 90: Entire article R&RE, p. 1572, § 1, effective June 7. L. 2002: (3) amended, p. 1547, § 304, effective October 1.

Editor's note: This section is similar to former § 35-9-110 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-9-124. Civil penalties. (1) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed five thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 90: Entire article R&RE, p. 1573, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-109 as it existed prior to 1990.

ANNOTATION

Applied in *Speer v. Kourlis*, 935 P.2d 43 (Colo. App. 1996).

35-9-125. Criminal penalties. (1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-9-120 (1) (a), (1) (b), (1) (e), (1) (f), (1) (j), (1) (k), or (2) (c).

(2) Any person who violates any of the provisions of section 35-9-120 (1) (a), (1) (b), (1) (c), (1) (e), (1) (f), (1) (h), (1) (j), (1) (k), (2) (a), (2) (b), (2) (c), or (2) (g) or 35-9-123 (3) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any person who violates section 35-9-120 (1) (g), (2) (d), or (2) (f) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) Any person who violates any of the provisions of section 35-9-120 (2) (e) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 90: Entire article R&RE, p. 1573, § 1, effective June 7. **L. 2002:** (2), (3), and (4) amended, p. 1547, § 305, effective October 1.

Editor's note: This section is similar to former § 35-9-109 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (2), (3), and (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-9-126. Pesticide fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the pesticide fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 316, § 5, effective July 1, 2009.)

Source: L. 90: Entire article R&RE, p. 1574, § 1, effective June 7. **L. 2006:** (1) amended, p. 1267, § 20, effective January 1, 2007. **L. 2009:** Entire section amended, (HB 09-1249), ch. 87, p. 316, § 5, effective July 1.

35-9-127. Advisory committee. An advisory committee, as established pursuant to article 10 of this title, shall assist the commissioner as set forth therein and in developing rules and regulations to carry out the provision of this article.

Source: L. 90: Entire article R&RE, p. 1574, § 1, effective June 7.

Editor's note: This section is similar to former § 35-9-106 as it existed prior to 1990.

35-9-128. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to pesticides and conduct workshops for the purpose of informing pesticide dealers of new developments in the field of pesticides.

Source: L. 90: Entire article R&RE, p. 1574, § 1, effective June 7.

ARTICLE 10

Pesticide Applicators' Act

Editor's note: This article was numbered as article 14 of chapter 6, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

35-10-101.	Short title.	35-10-114.5.	Private applicator - license required.
35-10-102.	Legislative declaration.	35-10-114.7.	Licensed private applicators - rules - repeal. (Repealed)
35-10-103.	Definitions.	35-10-115.	Qualified supervisor, certified operator, and private applicator licenses - examination - application - fees.
35-10-104.	Scope of article.	35-10-116.	Qualified supervisor and certified operator licenses - expiration - renewal of licenses - reinstatement.
35-10-105.	Commercial applicator - business license required.	35-10-117.	Unlawful acts.
35-10-106.	Commercial applicator - license requirements - application - fees.	35-10-117.5.	Unlawful acts for licensed private applicators.
35-10-107.	Commercial applicator business license - renewals.	35-10-118.	Powers and duties of the commissioner.
35-10-108.	Commercial applicators - invoice notice.	35-10-119.	Inspections - investigations - access - subpoena.
35-10-109.	Limited commercial and public applicators - no business license required.	35-10-120.	Enforcement.
35-10-110.	Registered limited commercial and registered public applicators - requirements for operation.	35-10-121.	Disciplinary actions - denial of license.
35-10-111.	Record-keeping requirements.	35-10-122.	Civil penalties.
35-10-112.	Notification requirements - registry of pesticide-sensitive persons - preemption - rules.	35-10-123.	Criminal penalties.
35-10-112.5.	Statewide uniformity of pesticide control and regulation - exceptions.	35-10-124.	Information.
35-10-113.	Qualified supervisor - license required.	35-10-125.	Advisory committee - sunset review.
35-10-114.	Certified operator - license required.	35-10-126.	Transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.

35-10-127.	Deadline for promulgation of rules and regulations for implementation of article, as	35-10-128.	amended. (Repealed) Repeal of article - termination of functions.
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35-10-101. Short title. This article shall be known and may be cited as the “Pesticide Applicators’ Act”.

Source: L. 90: Entire article R&RE, p. 1576, § 1, effective May 31.

Editor’s note: This section is similar to former § 35-10-101 as it existed prior to 1990.

35-10-102. Legislative declaration. The general assembly hereby finds and declares that pesticides perform a valuable function in controlling insects, rodents, weeds, and other forms of life which may be injurious to crops, livestock, and other desirable forms of plant and animal life, to structures, and to individuals. The general assembly further finds and declares that pesticides contain toxic substances which may pose a serious risk to the public health and safety and that regulation of pesticide use is necessary to prevent adverse effects on individuals and the environment.

Source: L. 90: Entire article R&RE, p. 1576, § 1, effective May 31.

Editor’s note: This section is similar to former § 35-10-102 as it existed prior to 1990.

35-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Certified operator” means an individual who applies any restricted-use pesticides for a commercial applicator, registered limited commercial applicator, or registered public applicator, without the on-site supervision of a qualified supervisor and that should be licensed pursuant to section 35-10-114.

(2) “Commercial applicator” means any person, other than a private applicator, who engages in the business of applying pesticides for hire or operating a device for hire that is designated by the commissioner as requiring licensure for use under this article.

(3) “Commissioner” means the commissioner of agriculture.

(4) “Department” means the department of agriculture.

(5) “Device” means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that “device” shall not include equipment used for the application of pesticides when sold separately therefrom.

(6) “EPA” means the United States environmental protection agency.

(7) “General-use pesticide” means any pesticide so designated by the commissioner or the administrator of the EPA.

(8) “Limited commercial applicator” means any person engaged in applying pesticides in the course of conducting a business other than the production of any agricultural commodity; except that such application shall be only in or on property owned or leased by the person or the person’s employer.

(8.5) “Local government” means a county, home rule county, city, town, city and county, home rule city, special district, or other political subdivision of the state.

(9) “Pest” means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.

(10) “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term “pesticide” shall not include any article that is a “new animal drug” as designated by the United States food and drug administration.

(11) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof; except that "plant regulator" shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, "plant regulator" shall not be required to include any of those nutrient mixtures or soil amendments which are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, which are not for pest destruction and which are nontoxic and nonpoisonous in the undiluted packaged concentration.

(11.5) "Private applicator" means any person who uses or supervises the use of a pesticide for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(12) "Public applicator" means any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision which applies pesticides.

(13) "Qualified supervisor" means any individual who, without supervision, evaluates pest problems or recommends pest controls using pesticides or devices that require licensure under this article for use; mixes, loads, or applies any pesticide; sells pesticide application services; operates devices that require licensure under this article for use; or supervises others in any of these functions.

(14) "Restricted-use pesticide" means any pesticide designated as a restricted- or limited-use pesticide by the commissioner or as a restricted-use pesticide by the administrator of the EPA.

(15) (a) "Technician" means any individual who:

(I) Uses, under the supervision of a qualified supervisor, a device that requires licensure under this article for use;

(II) Mixes, loads, or applies general-use pesticides under the supervision of a qualified supervisor, mixes or loads restricted-use pesticides under the supervision of a qualified supervisor, or applies restricted-use pesticides under the on-site supervision of a qualified supervisor; or

(III) Evaluates pest problems, recommends products or treatments for pest problems, or sells application services under the supervision of a qualified supervisor.

(b) "Technician" does not include any individual whose duties are solely clerical or janitorial or otherwise completely disassociated from pest control.

(16) "Under the on-site supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor who is present at the work site at the time the work is being performed.

(17) "Under the supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor, even if the qualified supervisor is not physically present at the work site at the time the work is performed.

(18) "Use" means all aspects of the handling of pesticides, including but not limited to the mixing, loading, application or administration, spill control, and disposal of a pesticide or its container.

Source: L. 90: Entire article R&RE, p. 1576, § 1, effective May 31. L. 96: (8) and (15)(a)(II) amended and (8.5) and (18) added, p. 1373, § 1, effective July 1. L. 2006: (1), (2), and (8) amended and (11.5) added, p. 1259, § 1, effective July 1; (2), (13), and (15)(a)(I) amended, p. 291, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 35-10-103 as it existed prior to 1990.

(2) Amendments to subsection (2) by House Bill 06-1239 and House Bill 06-1274 were harmonized.

35-10-104. Scope of article. (1) Any person who uses or supervises the use of any pesticide or device in the state of Colorado shall be subject to this article and to any rules adopted pursuant thereto.

(2) (Deleted by amendment, L. 2006, p. 1260, § 2, effective January 1, 2007.)

Source: L. 90: Entire article R&RE, p. 1578, § 1, effective May 31. L. 2006: Entire section amended, p. 1260, § 2, effective January 1, 2007.

35-10-105. Commercial applicator - business license required. Any person acting as a commercial applicator must possess a valid commercial applicator business license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto. A commercial applicator business license may only be issued for the class or subclass of pesticide application in which the qualified supervisor employed or otherwise retained by the commercial applicator is licensed.

Source: L. 90: Entire article R&RE, p. 1579, § 1, effective May 31.

Editor's note: This section is similar to former § 35-10-106 as it existed prior to 1990.

35-10-106. Commercial applicator - license requirements - application - fees. (1) As requisites for licensure, the applicant for a commercial applicator business license shall:

(a) Obtain liability insurance in the minimum amount of four hundred thousand dollars with the provision that such policy shall not be cancelled unless written notice is provided to the commissioner at least ten days prior to such cancellation; except that liability insurance policies containing a so-called "pollution exclusion" shall satisfy this paragraph (a);

(b) Employ or secure the services by documented agreement of a qualified supervisor who is licensed in the class or subclass of pesticide application or device use performed by the business;

(c) Provide verifiable training to all technicians in his employ according to standards adopted by the commissioner;

(d) Identify all pesticide application equipment in the form and manner prescribed by the commissioner;

(e) If it engages in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for a commercial applicator business license shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that the applicant has complied with subsection (1) of this section.

(3) (a) If a commercial applicator operates under more than one business name from a single location, the name of each such business providing services related to pesticide application shall be listed with the commissioner in the form and manner he shall designate. The commissioner may require that a separate fee be paid for each business name so listed.

(b) No additional commercial applicator business license shall be required for such additional business names.

(c) If a commercial applicator operates under more than one business name from a single location, the applicator must maintain separate pesticide application records pursuant to section 35-10-111 and separate business records for each such business name.

(4) Each applicant for a commercial applicator business license shall pay a license fee in an amount determined by the commissioner.

(5) The expiration date of each commercial applicator business license shall be determined by the commissioner, but the duration of such license shall not exceed three years.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

Source: L. 90: Entire article R&RE, p. 1579, § 1, effective May 31. L. 2006: (1)(b) and (5) amended, p. 291, § 2, effective July 1.

Editor's note: This section is similar to former §§ 35-10-106, 35-10-108, and 35-10-110 as they existed prior to 1990.

35-10-107. Commercial applicator business license - renewals. (1) Each commercial applicator shall make an application to renew its business license on or before the expiration date of the license. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If the application and fee for renewal are not postmarked on or before the thirtieth day following the expiration date of the license, the business license shall not be renewed, and the commercial applicator shall apply for a new license.

Source: L. 90: Entire article R&RE, p. 1580, § 1, effective May 31. L. 2006: Entire section amended, p. 292, § 3, effective July 1.

Editor's note: This section is similar to former § 35-10-109 as it existed prior to 1990.

35-10-108. Commercial applicators - invoice notice. Commercial applicators shall include a statement in conspicuous type on each customer invoice that indicates that commercial applicators are licensed by the department. Said statement shall be exactly prescribed by rule adopted by the commissioner.

Source: L. 90: Entire article R&RE, p. 1580, § 1, effective May 31.

35-10-109. Limited commercial and public applicators - no business license required. No business license shall be required for limited commercial or public applicators; except that the commissioner shall require such applicators that apply restricted-use pesticides to register with the department. The commissioner shall determine the form and manner of the registration, as well as the amount of any administrative fees associated with such registration. A limited commercial or public applicator may register voluntarily, regardless of whether such applicator applies restricted-use pesticides, by submitting a request in the form and manner specified by the commissioner.

Source: L. 90: Entire article R&RE, p. 1580, § 1, effective May 31. L. 2006: Entire section amended, p. 1261, § 3, effective January 1, 2007.

Editor's note: This section is similar to former § 35-10-113 as it existed prior to 1990.

35-10-110. Registered limited commercial and registered public applicators - requirements for operation. (1) For each class or subclass of pesticide application a registered limited commercial or registered public applicator applies, the applicator shall employ at least one qualified supervisor who is licensed in that class or subclass of pesticide application or shall secure the services of such qualified supervisor by documented agreement.

(2) Notwithstanding subsection (1) of this section, no registered public applicator shall be required to pay licensing or certification fees for any qualified supervisor or certified operator whom the applicator may employ.

(3) Every registered limited commercial or registered public applicator shall provide verifiable training to all technicians in its employ according to standards adopted by the commissioner. Such standards shall be identical to those adopted by the commissioner with respect to commercial applicators pursuant to section 35-10-106 (1) (c).

(4) If the commissioner, pursuant to section 35-10-109, establishes a registry of limited commercial and public applicators, he or she may also require that each registered applicator report, in the form and manner the commissioner shall designate, any change to the information provided by such applicator to the registry or in any such reports previously submitted, within fifteen days after said change.

Source: L. 90: Entire article R&RE, p. 1580, § 1, effective May 31. L. 2006: Entire section amended, p. 1261, § 4, effective January 1, 2007.

Editor's note: This section is similar to former § 35-10-113 as it existed prior to 1990.

35-10-111. Record-keeping requirements. Each commercial, registered limited commercial, licensed private, and registered public applicator shall keep and maintain records of each pesticide application in the form and manner designated by the commissioner. Such records shall be retained for a period of three years after the date of the pesticide application and shall be kept at the address specified in the application for the commercial applicator's business license or, in the case of registered limited commercial and registered public applicators, at the address specified in the registry authorized in section 35-10-109 or, in the case of licensed private applicators, at the address of record on file with the commissioner.

Source: L. 90: Entire article R&RE, p. 1581, § 1, effective May 31. L. 2006: Entire section amended, p. 1261, § 5, effective January 1, 2007.

Editor's note: This section is similar to former § 35-10-111 as it existed prior to 1990.

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption - rules. (1) (a) The commissioner shall promulgate rules for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry if they can provide proof of medical justification by a physician licensed in Colorado in the form and manner prescribed by the commissioner. The proof of medical justification shall be updated every two years. The registry shall be updated at least annually, and the published registry shall be made readily accessible, in a form and manner prescribed by the commissioner, to all commercial, registered limited commercial, and registered public applicators on record with the commissioner.

(b) The commissioner shall provide standardized notification signs to any person accepted for the registry for such person to post on his property. These signs shall be designed, manufactured, and distributed solely by the department.

(c) (I) A commercial, registered limited commercial, or registered public applicator, prior to applying a pesticide in any turf or ornamental category, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any pesticide-sensitive person whose name is on the published registry and:

- (A) Who resides on the property to be treated;
- (B) Resides on property that abuts the property to be treated; or
- (C) Resides in a multi-unit dwelling that abuts a common area to be treated.

(II) If two property sites would be considered to be abutting but for the fact that such sites are separated by an alley, for the purposes of this section such sites are deemed to be abutting.

(d) A commercial, registered limited commercial, or registered public applicator in the wood-destroying organism pest control, residential or commercial pest control, or interior plant pest control categories, prior to making a structural pesticide application to a

multi-unit dwelling, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any pesticide-sensitive person whose name is on the published registry and who resides at that multi-unit dwelling.

(e) The commissioner may establish rules to further clarify the circumstances and manner in which notice shall be given to pesticide-sensitive persons.

(2) (a) Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any turf or ornamental category shall, at the time of application, post a sign or signs notifying the public of the application. Such signs shall be posted at any conspicuous point or points of entry to the property receiving the application.

(b) Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any aquatic category shall post, at the time of application, a sign or signs notifying the public of the application. Such signs shall be posted in the manner designated by the commissioner through the adoption of rules pursuant to article 4 of title 24, C.R.S.

(c) The notice-of-application signs specified in paragraphs (a) and (b) of this subsection (2) shall be water resistant and shall measure at least four inches in height and five inches in width. Each sign shall contain the following information in black lettering and symbols on a bright yellow background:

(I) The word "WARNING", in at least sixty-point bold-faced type;

(II) The words "PESTICIDES APPLIED", in at least twenty-four-point bold-faced type;

(III) The symbol of a circle at least two inches in diameter with a diagonal slash over an adult, child, and dog; and

(IV) The name of the commercial, registered limited commercial, or registered public applicator that made the application, in at least eighteen-point bold-faced type.

(d) If a commercial or registered limited commercial applicator makes a pesticide application on a commercial property site pursuant to paragraph (a) or (b) of this subsection (2) and an owner of the site or an agent of an owner of the site is not present at the site, then, in addition to the information required by paragraph (c) of this subsection (2), the notice-of-application signs posted by the applicator at the site shall also contain the following information in black lettering and symbols on a bright yellow background in at least eighteen-point bold-faced type:

(I) The telephone number of the applicator;

(II) The name of the pesticide applied; and

(III) The date the pesticide was applied.

(3) No county, city and county, municipality, home rule county, home rule city and county, or home rule municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, municipality, home rule county, home rule city and county, and home rule municipality shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, municipality, home rule county, home rule city and county, or home rule municipality on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

Source: **L. 90:** Entire article R&RE, p. 1581, § 1, effective May 31. **L. 96:** (1)(a), (1)(c), and (3) amended and (2)(d) added, p. 1374, §§ 2, 3, effective July 1. **L. 2006:** (1)(a) and (1)(c) amended and (1)(d) and (1)(e) added, p. 292, § 4, effective July 1; (1)(a), (1)(c), (2)(a), (2)(b), IP(2)(c), (2)(c)(IV), and IP (2)(d) amended and (1)(d) added, p. 1262, § 6, effective January 1, 2007.

Editor's note: Amendments to subsection (1)(a), (1)(c), and (1)(d) by House Bill 06-1239 and House Bill 06-1274 were harmonized.

ANNOTATION

Notification requirements of subsection (3) are not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. Coparr, Ltd.

v. City of Boulder, 942 F.2d 724 (10th Cir. 1991).

35-10-112.5. Statewide uniformity of pesticide control and regulation - exceptions.

(1) The general assembly hereby determines that the citizens of this state benefit from a system of safe, effective, and scientifically sound pesticide regulation. The general assembly further finds that a system of pesticide regulation that is consistent and coordinated, that creates statewide uniform standards, and that conforms with both state and federal technical standards and requirements is essential to the public health, safety, and welfare, and finds that local regulation of pesticides that is inconsistent with and adopts different standards from federal and state requirements does not assist in achieving these benefits. The general assembly also finds and declares that, through statute and regulation, the state has created a system of pesticide regulation based upon scientific standards that protects the citizens of this state. The general assembly expressly finds and declares that pesticide regulation is a matter of statewide concern.

(2) No local government shall adopt or continue in effect any ordinance, rule, resolution, charter provision, or statute regarding the use of any pesticide by persons regulated by this article or federal law and pertaining to:

(a) Any labeling or registration requirements for pesticides, including requirements regarding the name of the product, the name and address of the manufacturer, and any applicable registration numbers;

(b) Use and application of pesticides by persons regulated by this article or federal law, including, but not limited to, directions for use, classification of pesticides as general or restricted use, mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker specifications, container storage and disposal, required intervals between application and harvest of food or feed crops, rotational crop restrictions, and warnings against use on certain crops, animals, or objects or against use in or adjacent to certain areas;

(c) Except as specifically provided in this article, any warnings and precautionary statements, notifications, or statements of practical treatment; or

(d) Licensure, training, or certification requirements for persons regulated under this article, including any insurance and record-keeping requirements.

(3) (a) Nothing in this article may be construed to limit the authority of a local government as defined by state law to:

(I) Zone for the sale or storage of any pesticide, provide or designate sites for disposal of any pesticide or pesticide container, adopt or enforce building and fire code requirements, regulate the transportation of pesticides consistently with and in no more strict of a manner than state and federal law, adopt regulations pursuant to a storm water management program that is consistent with federal or state law, or adopt regulations to protect surface or groundwater drinking water supplies consistent with state or federal law concerning the protection of drinking water supplies;

(II) Take any action specifically authorized or required by any federal or state law or regulation with respect to pesticides, or to take any action otherwise prohibited by this article in order to comply with any specific federal or state requirement or in order to avoid a fine or other penalty under federal or state law;

(III) Regulate the use of pesticides on property owned or leased by the local government;

(IV) Issue local general occupational licenses to persons regulated by this article.

(b) This subsection (3) may not be construed to authorize a local government to utilize the authority to zone, to provide or designate disposal sites, to adopt and enforce building and fire codes, or to regulate the transportation of pesticides as described in paragraph (a) of this subsection (3) to directly or indirectly regulate or prohibit the application of pesticides by persons regulated by this article or by federal law.

(c) Nothing in this article shall be construed to be an implicit grant of authority to a local government that is not otherwise granted by state law.

(4) Any local government that promulgates an ordinance that concerns pesticides, that is promulgated pursuant to section 31-15-707 (1) (b), C.R.S., or that is promulgated pursuant to any authority described in paragraph (a) of subsection (3) of this section concerning pesticides shall file the following with the department of agriculture:

- (a) A certified copy of the ordinance; and
- (b) A map or legal description of the geographic area that the local government intends to regulate under the ordinance.

Source: L. 96: Entire section added, p. 1375, § 4, effective July 1.

35-10-113. Qualified supervisor - license required. Any individual acting as a qualified supervisor must possess a valid qualified supervisor license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

Source: L. 90: Entire article R&RE, p. 1582, § 1, effective May 31.

Editor's note: This section is similar to former § 35-10-105 as it existed prior to 1990.

35-10-114. Certified operator - license required. Any individual acting as a certified operator shall possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

Source: L. 90: Entire article R&RE, p. 1582, § 1, effective May 31. **L. 96:** Entire section amended, p. 1377, § 5, effective July 1.

Editor's note: This section is similar to former § 35-10-105 as it existed prior to 1990.

35-10-114.5. Private applicator - license required. Any private applicator who uses or supervises the use of a restricted-use pesticide shall possess a valid private applicator license issued by the commissioner in accordance with this article and any rules adopted pursuant to this article. An unlicensed private applicator may use a restricted-use pesticide under the supervision of a licensed private applicator for uses authorized by the licensed private applicator's license.

Source: L. 2006: Entire section added, p. 1263, § 7, effective January 1, 2007.

35-10-114.7. Licensed private applicators - rules - repeal. (Repealed)

Source: L. 2006: Entire section added, p. 1263, § 8, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 2007. (See L. 2006, p. 1263.)

35-10-115. Qualified supervisor, certified operator, and private applicator licenses - examination - application - fees. (1) Each applicant for a qualified supervisor, certified operator, or private applicator license shall:

- (a) Pass a written examination in each class or subclass of pesticide application, or device use, in which he or she wishes to be licensed;
- (b) Possess the degree of experience and any other qualifications which may be required by the commissioner for licensure under this section; and

(c) If he wishes to be licensed to engage in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for licensure under this section shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that such applicant has complied with subsection (1) of this section.

(3) Each licensee shall be required to report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in any such reports previously submitted, within fifteen days of such change.

(4) Each applicant for a license issued under this section shall pay a license fee in an amount determined by the commissioner, after review by the advisory committee created in section 35-10-125.

(5) The commissioner shall issue licenses to qualified private applicators on and after January 1, 2007. A license issued in Colorado by the United States environmental protection agency, issued to a private applicator before January 1, 2007, shall remain valid for purposes of this article through the expiration date of such license.

Source: L. 90: Entire article R&RE, p. 1582, § 1, effective May 31. L. 2006: (1)(a) amended, p. 293, § 5, effective July 1; IP(1) amended and (5) added, p. 1263, § 9, effective January 1, 2007.

35-10-116. Qualified supervisor and certified operator licenses - expiration - renewal of licenses - reinstatement. (1) Licenses issued pursuant to section 35-10-115 shall be valid for a period determined by the commissioner, but the duration of such license shall not exceed three years.

(2) A licensee licensed pursuant to section 35-10-115 may have the option to apply to renew a license without further examination if he has completed, within the previous three years, the competency requirements established by the commissioner.

(3) A licensee shall submit a renewal application in the form and manner designated by the commissioner on or before the termination date of such license and shall pay a renewal fee in an amount determined by the commissioner.

(4) If the application for renewal of any license issued pursuant to section 35-10-115 is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total renewal fee is paid.

(5) If the application and fee for renewal of any license issued pursuant to section 35-10-115 are not postmarked on or before the thirtieth day following the expiration date of the license, the license shall not be renewed and the licensee shall apply for a new license.

(6) Notwithstanding subsection (5) of this section, any license issued pursuant to this section that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

(7) Licenses not reinstated within one hundred eighty days after the expiration date shall not be reinstated. The former holder of such a license who wishes to be licensed shall apply for a new license.

Source: L. 90: Entire article R&RE, p. 1583, § 1, effective May 31. L. 2006: (1) amended and (6) and (7) added, p. 293, § 6, effective July 1.

35-10-117. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

(a) To perform any of the acts for which licensure as a commercial applicator, qualified supervisor, certified operator, or private applicator is required without possessing a valid license to do so;

(b) To hold oneself out as being so qualified to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts;

(c) To solicit, advertise, or offer to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts; to act as an agent for any principal to solicit from any person the purchase of pesticide application or pest control services from the principal when the principal does not possess a valid license to perform the services being offered; or to enter into a contract to perform such services;

(d) To refuse to comply with a cease-and-desist order issued pursuant to section 35-10-120;

(e) To refuse or fail to comply with the provisions of this article;

(f) (I) To make false, misleading, deceptive, or fraudulent representations.

(II) No claims of absolute safety shall be made for any product regulated by this article.

(g) To impersonate any state, county, city and county, or municipal official or inspector;

(h) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner;

(i) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labeling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner; or

(j) To refuse or fail to comply with any requirements of the federal worker protection standards set forth in 40 CFR part 170.

(2) It is unlawful and a violation of this article for any person acting as a commercial, registered limited commercial, or registered public applicator, or as a qualified supervisor or certified operator:

(a) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labeling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner;

(b) To use or recommend the use of any pesticide not registered with the department pursuant to article 9 of this title or to use or recommend the use of a pesticide in any manner inconsistent with the restrictions of the commissioner or the administrator;

(b.5) To use or recommend the use of any device that requires licensure for use in any manner inconsistent with the restrictions of the commissioner or the administrator;

(c) To use any device that requires licensure for use or any pesticide, or to direct or recommend such use, without providing appropriate supervision, including, but not limited to, the application of any pesticide without providing the supervision of a qualified supervisor licensed in that class or subclass of pesticide application;

(d) To maintain or supervise the maintenance of any device that requires licensure for use or pesticide application equipment, including, but not limited to, loading pumps, hoses, or metering devices, in an unsafe or negligent manner;

(e) To fail to provide the notification required pursuant to section 35-10-112 (1) (c);

(f) To make false or misleading representations or statements of fact in any application, record, or report required by this article or any rules or regulations adopted pursuant thereto;

(g) To fail to maintain or submit any records or reports required by this article or any rules or regulations adopted pursuant thereto.

(3) It is unlawful and a violation of this article for any commercial applicator, qualified supervisor, or certified operator:

(a) To permit the use of his license by any other person;

(b) To use or supervise or recommend the use of any device that requires licensure for use, or any pesticide, which, including but not limited to generally accepted standards of practice, would be ineffective or inappropriate for the pest problem being treated;

(c) (I) To use any device that requires licensure for use or apply any pesticide or to recommend or supervise such acts in any manner that fails to meet generally accepted standards for such use or application except as provided by subparagraph (II) of this paragraph (c).

(II) If a commercial applicator receives instructions from a party contracting for such applicator's services and the commercial applicator knows or should know that using the device or applying the pesticide in the manner specified by the contracting party may not or does not meet generally accepted standards for such use or application, the commercial applicator must so inform the contracting party. If the contracting party, after being so advised, continues to require the commercial applicator to perform the application or use the device according to these instructions, the commercial applicator may follow these instructions for such application or use unless such application or use would violate any of the directions contained on the pesticide or the device or the labeling of either or would violate any provision of this article or article 9 of this title or any rule or regulation adopted pursuant to this article or article 9 of this title. If the commercial applicator complies with these requirements, the party contracting for such application of any pesticide or use of any device shall have no cause of action for damages against the commercial applicator if the application or use causes death or injury to the contracting party or his property or is unsatisfactory in its result, unless the contracting party establishes, by a preponderance of the evidence, that such death, injury, or unsatisfactory result resulted from negligence or an intentional act not encompassed within or necessitated by the instructions provided by such contracting party.

(4) It is unlawful and a violation of this article for any commercial applicator:

(a) To operate any device that requires licensure for use, or to apply any pesticide, if the insurance required by section 35-10-106 (1) (a) is not in full force and effect at the time of such use or application, or if it does not have on file with the department, in the form and manner designated by the commissioner, verification that said insurance is in full force and effect;

(b) To fail to provide any customer with any information required to be so provided by this article or by any rules and regulations adopted pursuant thereto.

(5) It is unlawful and a violation of this article for any employee or official of the department to disclose or use for his own advantage any information derived from any applications, reports, or records, including medical records, submitted to the department pursuant to this article or to reveal such information to anyone except authorized persons, who may include officials or employees of the state, the federal government, the courts of this or other states, and physicians.

(6) The failure by any person to comply with the provisions of subsection (1) (a), (1) (b), (1) (c), (1) (f), or (4) (b) of this section is a deceptive trade practice and is subject to the protections of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 90: Entire article R&RE, p. 1583, § 1, effective May 31. **L. 2006:** (2)(b), (2)(c), (2)(d), (3)(b), (3)(c)(I), and (4)(a) amended and (2)(b.5) added, p. 294, § 7, effective July 1; (1)(a) and IP(2) amended and (1)(i) and (1)(j) added, p. 1264, § 10, effective January 1, 2007.

Editor's note: This section is similar to former § 35-10-114 as it existed prior to 1990.

35-10-117.5. Unlawful acts for licensed private applicators. (1) It is unlawful and a violation of this article for a licensed private applicator:

(a) To make false or misleading representations or statements of fact in any license, application, record, or report required by this article or any rules adopted pursuant thereto;

(b) To fail to maintain or submit any records or reports required by this article or any rules adopted pursuant thereto; or

(c) To permit the use of a private applicator license by any person other than the person to whom the license was issued.

Source: L. 2006: Entire section added, p. 1264, § 11, effective January 1, 2007.

35-10-118. Powers and duties of the commissioner. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) The regulation of all aspects of pesticide application, including, but not limited to, the storage, use, application, and disposal of any pesticide or device that requires licensure for use by any person subject to this article;

(b) The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(c) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition, other discipline through stipulation, or the restriction, probation, denial, suspension, or revocation of any license authorized under this article;

(d) The content of the examination required for the administration of this article and the amount of any examination and examination grading fee.

(3) The commissioner shall, for examinations required for any license under this article:

(a) Develop each such examination, or adopt a commercially standardized examination, required for the administration of this article and the amount of any examination and examination grading fee;

(b) Establish a passing score for each examination that reflects a minimum level of competency in the class or subclass for which the applicant is being tested;

(c) Administer each such examination or contract with a person, corporation, or other entity to administer each such examination.

(4) The commissioner shall establish standards and procedures to issue a license to any person who possesses a valid license from another jurisdiction, where the qualifications for that license are substantially similar to those adopted for a comparable license authorized under this article.

(5) The commissioner shall establish any competency requirements and standards for any individuals licensed under section 35-10-115.

(6) The commissioner is authorized to conduct hearings required under sections 35-10-119 and 35-10-120 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(7) The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing the article and any rules and regulations adopted pursuant thereto.

(8) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal licensing agreements.

(8.5) (a) The department may provide the following only to the extent of funding received pursuant to paragraph (b) of this subsection (8.5):

(I) Education programs for urban residents regarding the proper use of pesticides and regarding the dangers of misuse or overuse of pesticides; and

(II) Education programs for firefighters regarding precautions and procedures that are necessary when fighting fires that involve or are in the vicinity of pesticides or fertilizers.

(b) The commissioner may accept gifts, grants, and donations of any kind from any private or public source for the purposes of this subsection (8.5). The commissioner shall transmit all such gifts, grants, or donations to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(9) The commissioner is authorized to promulgate rules and regulations to comply with the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that such

rules and regulations shall not contravene any provision of this article, article 9 of this title, or any other provision of state law.

(9.5) The commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the commissioner, may constitute a significant risk to public health or safety.

(10) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

Source: **L. 90:** Entire article R&RE, p. 1585, § 1, effective May 31. **L. 96:** (2)(c) and (3) amended and (8.5) added, p. 1377, § 6, effective July 1. **L. 2006:** IP(2), (2)(a), (2)(d), and (3) amended and (9.5) added, p. 295, §§ 8, 9, effective July 1; (8.5)(b) amended, p. 1265, § 12, effective January 1, 2007. **L. 2009:** (8.5)(b) amended, (HB 09-1249), ch. 87, p. 316, § 6, effective July 1.

Editor's note: This section is similar to former §§ 35-10-104 and 35-10-117 as they existed prior to 1990.

Cross references: For the "Federal Insecticide, Fungicide, and Rodenticide Act", see Pub.L. 92-516, codified at 7 U.S.C. § 136 et seq.

35-10-119. Inspections - investigations - access - subpoena. (1) The commissioner shall provide for the inspection and analysis of pesticides being used and for the inspection of equipment, devices that require licensure for use, or apparatus used for the application of pesticides, and the commissioner may require proper repairs or other changes before further use.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(4) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To any land, water, or structures thereon in which any devices that require licensure for use, pesticides, containers, rinsates, or other related materials are or have been kept, used, stored, handled, processed, disposed of, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: **L. 90:** Entire article R&RE, p. 1587, § 1, effective May 31. **L. 2006:** (1) and (4)(a) amended, p. 296, § 10, effective July 1; (4)(a) amended, p. 1265, § 13, effective January 1, 2007.

Editor's note: (1) This section is similar to former § 35-10-115 as it existed prior to 1990.

(2) Amendments to subsection (4)(a) by House Bill 06-1239 and House Bill 06-1274 were harmonized.

35-10-120. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at the person's discretion, a hearing to be held within a reasonable period of time to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to him indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 90: Entire article R&RE, p. 1587, § 1, effective May 31. L. 96: (2) amended, p. 1378, § 7, effective July 1.

Editor's note: This section is similar to former §§ 35-10-118 and 35-10-119 as they existed prior to 1990.

35-10-121. Disciplinary actions - denial of license. (1) The commissioner may issue letters of admonition, impose other discipline through stipulation, or restrict, impose probation on, deny, suspend, refuse to renew, or revoke any license or registration authorized under this article if the applicant, registrant, or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has had an equivalent license or registration denied, revoked, or suspended by any authority;

(d) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that a consent decree entered into with the EPA shall not be considered a violation of such act unless an order from the regional administrator of the EPA or the consent decree shall specifically state that a violation has occurred;

(e) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(f) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee, registrant, or certified person from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(2.5) Proceedings under this section shall be conducted pursuant to article 4 of title 24, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to such proceedings in cases of deliberate or willful violation; in cases of violation of labeling directions or requirements; or in cases in which the actions or omissions of the licensee or registrant in violation of this article have caused or threatened to cause substantial danger or harm to public health and safety, to property, or to the environment, as defined by the commissioner pursuant to section 35-10-118 (2). In such cases, no revocation, suspension, limitation, or modification of a license or registration shall be lawful unless the commissioner has given the licensee or registrant notice in writing regarding any facts or conduct that may warrant such action and has afforded the licensee or registrant opportunity to submit written data, views, and arguments with respect to such facts or conduct.

(3) No licensee or registrant whose license or registration has been revoked may apply or reapply for any license or registration under this article until two years after the date of such revocation.

(4) Any person aggrieved by a final disciplinary action taken by the commissioner may appeal such action to the Colorado court of appeals in accordance with section 24-4-106 (11), C.R.S.

Source: L. 90: Entire article R&RE, p. 1588, § 1, effective May 31. L. 96: IP(1) amended and (2.5) and (4) added, p. 1378, § 8, effective July 1. L. 2006: IP(1), (1)(c), (2), (2.5), and (3) amended, p. 1265, § 14, effective July 1.

Editor's note: This section is similar to former § 35-10-112 as it existed prior to 1990.

Cross references: For the "Federal Insecticide, Fungicide, and Rodenticide Act", see Pub.L. 92-516, codified at 7 U.S.C. § 136 et seq.

35-10-122. Civil penalties. (1) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision, rule, or regulation for the second time.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 90: Entire article R&RE, p. 1589, § 1, effective May 31. L. 96: (1), (2), and (4) amended, p. 1379, § 9, effective July 1.

Editor's note: This section is similar to former § 35-10-120 as it existed prior to 1990.

ANNOTATION

Penalties imposed by this section pursuant to this section were well within the maximum allowable because of the number of statutory and regulatory violations plaintiffs were found

to have committed with respect to each of three incidents. *Speer v. Kourlis*, 935 P.2d 43 (Colo. App. 1996).

35-10-123. Criminal penalties. (1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to

article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (g), and (5).

(2) Any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (g), (1) (i), (1) (j), (2) (a), (2) (b), (2) (c), (2) (d), (3) (a), or (4) (a) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any person who violates any of the provisions of section 35-10-117 (1) (f), (2) (f), (2) (g), (4) (b), and (5) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 90:** Entire article R&RE, p. 1589, § 1, effective May 31. **L. 2002:** (2) and (3) amended, p. 1547, § 306, effective October 1. **L. 2006:** (2) amended, p. 1266, § 15, effective July 1.

Editor's note: This section is similar to former § 35-10-120 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (2) and (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-10-124. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to the use and handling of pesticides and conduct workshops for the purpose of informing the pesticide applicators of new developments in the field of pesticides.

Source: **L. 90:** Entire article R&RE, p. 1589, § 1, effective May 31.

Editor's note: This section is similar to former § 35-10-116 as it existed prior to 1990.

35-10-125. Advisory committee - sunset review. (1) The state agricultural commission created by section 35-1-105 shall appoint an advisory committee of eleven members to assist the commissioner in promulgating rules and regulations to carry out the provisions of this article.

(2) The committee shall consist of the following members:

(a) A formulator, or his Colorado representative, actively engaged in the sale of pesticides in Colorado;

(b) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of agricultural crop pests;

(c) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of turf or ornamental pests;

(d) A commercial applicator, licensed under this article, who is actively engaged in the application of pesticides for the control of structural pests;

(e) A qualified supervisor, employed by a limited commercial applicator registered under this article, who is actively engaged in the application of pesticides;

(f) Two representatives from public applicators registered under this article, each of whom shall be an elected official or a designee thereof;

(g) A representative from Colorado state university agricultural experiment station or extension service;

(h) A representative from the Colorado department of public health and environment; and

(i) Two representatives from the general public, one of whom is actively engaged in agricultural production.

(3) All members of the advisory committee, with the exception of the formulator, shall be residents of this state.

(4) The appointment of the formulator, the commercial applicator engaged in the control of agricultural crop pests, and one of the representatives from a registered public applicator shall expire on January 1, 1991; and the appointment of the commercial

applicator engaged in the control of turf or ornamental pests, the representative from the general public who is actively engaged in agricultural production, the qualified supervisor employed by a registered limited commercial applicator, and the representative from the department of health shall expire on January 1, 1992. The initial appointment of all other members shall be for a term of three years. Thereafter, the appointment of each member to the committee shall be for a term of three years.

(5) Members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such committee.

(6) Repealed.

Source: **L. 90:** Entire article R&RE, p. 1589, § 1, effective May 31. **L. 96:** (6) repealed, p. 31, § 2, effective March 18. **L. 2006:** (2)(e) and (4) amended, p. 1266, § 16, effective July 1; (2)(h) amended, p. 296, § 11, effective July 1.

Editor's note: This section is similar to former § 35-10-121 as it existed prior to 1990.

35-10-126. Transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

Source: **L. 90:** Entire article R&RE, p. 1590, § 1, effective May 31. **L. 2006:** Entire section amended, p. 1266, § 17, effective July 1. **L. 2009:** Entire section amended, (HB 09-1249), ch. 87, p. 317, § 7, effective July 1.

Editor's note: This section is similar to former § 35-10-107 as it existed prior to 1990.

35-10-127. Deadline for promulgation of rules and regulations for implementation of article, as amended. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 1590, § 1, effective May 31. **L. 2006:** Entire section repealed, p. 296, § 12, effective July 1.

35-10-128. Repeal of article - termination of functions. Effective July 1, 2015, this article is repealed. The regulatory functions of the commissioner of agriculture shall also terminate on July 1, 2015. Prior to such repeal and termination, the regulatory functions shall be reviewed as provided for in section 24-34-104, C.R.S., and, as part of such review, the department of regulatory agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1) (b), C.R.S., or under the police power of any political subdivision of the state.

Source: **L. 90:** Entire article R&RE, p. 1590, § 1, effective May 31. **L. 91:** Entire section amended, p. 689, § 63, effective April 20. **L. 93:** Entire section amended, p. 997, § 2, effective June 2. **L. 96:** Entire section amended, p. 1379, § 10, effective July 1. **L. 2006:** Entire section amended, p. 296, § 13, effective July 1; entire section amended, p. 1267, § 18, effective July 1; entire section amended, p. 1267, § 19, effective January 1, 2007.

Editor's note: This section is similar to former § 35-10-125 as it existed prior to 1990.

ARTICLE 11

Colorado Chemigation Act

Editor's note: This article was repealed in 1983 and was subsequently recreated and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For

amendments to this article prior to 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

35-11-101.	Short title.	35-11-111.	Inspections - entry upon land.
35-11-102.	Definitions.	35-11-112.	Denial, suspension, or revocation of permit.
35-11-103.	Chemigation permit.	35-11-113.	Enforcement by ground water management districts.
35-11-104.	Rules and regulations.	35-11-114.	Chemigation program management fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.
35-11-105.	Issuance of provisional chemigation permit - fees.	35-11-115.	Penalties.
35-11-106.	Issuance of chemigation permit - fees.	35-11-116.	Injunctive proceedings.
35-11-107.	Equipment and installation requirements.	35-11-117.	Effective date of rules and regulations.
35-11-108.	Affidavit in lieu of permit.		
35-11-109.	Replacement or modification of equipment.		
35-11-110.	Failure to pass inspection - summary suspension - repair orders.		

35-11-101. Short title. This article shall be known and may be cited as the "Colorado Chemigation Act".

Source: L. 87: Entire article RC&RE, p. 1278, § 1, effective July 1.

35-11-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Chemical" means any fertilizer or pesticide.
- (2) "Chemigation" means any process whereby chemicals are applied to land or crops in or with water through a closed irrigation system. "Chemigation" does not mean any process whereby chemicals are applied to land or crops in or with water pumped from a stock watering well, a domestic well with a diameter of two inches or less, or from a tailwater collection pond.
- (3) "Commissioner" means the commissioner of agriculture.
- (4) "Contamination" means the degradation of natural water quality as a result of man's activities.
- (5) "Department" means the department of agriculture.
- (6) "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients.
- (7) "Groundwater" means any water not visible on the surface of the ground under natural conditions.
- (8) "Irrigation system" means any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of groundwater or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. "Irrigation system" does not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source and does not include stock water wells, any domestic well with a diameter of two inches or less, or a system which includes a tailwater collection pond.
- (9) "Open discharge system" means a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.
- (10) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.
- (11) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals,

and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(12) "Pollution" means the man-made or man-induced alteration of the physical, chemical, biological, or radiological integrity of water.

Source: L. 87: Entire article RC&RE, p. 1278, § 1, effective July 1. L. 88: (2) and (8) amended, p. 1219, § 1, effective July 1.

35-11-103. Chemigation permit. (1) On and after January 1, 1990, no person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a chemigation permit from the department.

(2) On and after July 1, 1987, a person may obtain, pursuant to section 35-11-105, a provisional chemigation permit from the department for the application of chemicals to land or crops through the use of chemigation.

(3) Nothing in this section shall require a person to obtain a chemigation permit to pump or divert water mixed with any chemical to or through an open discharge system.

Source: L. 87: Entire article RC&RE, p. 1279, § 1, effective July 1.

35-11-104. Rules and regulations. (1) The commissioner shall promulgate rules and regulations pursuant to section 24-4-103, C.R.S., to:

- (a) Administer the chemigation permit program;
- (b) Establish equipment or performance standards and installation requirements;
- (c) Establish fees for the direct and indirect costs of administering the provisions of this article; and
- (d) Establish criteria for the entry of inspectors upon lands for purposes of conducting inspections.

(2) The commissioner shall immediately notify the director of the department of public health and environment of the summary suspension of any permit, of the denial, suspension or revocation of a permit, including the specific reason thereof; and the commissioner shall also notify the director of the department of public health and environment of any criminal or civil proceeding brought pursuant to this article. The notice required herein shall contain the legal description of the location of the well which is the subject of the commissioner's action.

Source: L. 87: Entire article RC&RE, p. 1279, § 1, effective July 1. L. 94: (2) amended, p. 2804, § 573, effective July 1.

35-11-105. Issuance of provisional chemigation permit - fees. (1) On and after July 1, 1987, and before January 1, 1990, any person who intends to utilize chemigation may, before commencing, file with the department an application for a provisional chemigation permit for each irrigation system utilizing chemigation. Such application shall be on forms provided by the department.

(2) The applicant for a provisional chemigation permit shall, on the application, certify that the irrigation system for which he is seeking a permit includes properly installed and functioning equipment in compliance with section 35-11-107.

(3) Upon receipt of a complete application for a provisional chemigation permit, the department may issue a provisional chemigation permit to the applicant for a specific irrigation system. The permit holder shall attach, in a prominent place, the permit to the irrigation system for which the permit was issued.

(4) The fee for a provisional chemigation permit and the annual renewal permit shall be established by rule and regulation of the commissioner and shall reflect all direct and indirect costs for the administration of this article but shall not exceed fifty dollars. The inspection fee for a provisional chemigation permit shall be established by the commissioner and shall reflect all direct and indirect costs of the inspection but shall not exceed forty dollars. A provisional chemigation permit shall expire on March 31 of the year

subsequent to the date the provisional chemigation permit was issued. The reinstatement fee for an expired provisional chemigation permit shall be double the amount of the fee for a provisional chemigation permit. A provisional chemigation permit shall not be assignable. The amount of indirect costs assessed under this subsection (4) shall be based on the number of FTE in the program expressed as a percentage of the total FTE in the department. In no case shall the indirect costs assessment exceed this percentage.

(5) In the event that a ground water management district contracts with the department for the enforcement of the provisions of this article pursuant to the provisions of section 35-11-113, the amount of the provisional fee and the annual renewal fee for persons utilizing chemigation within such district shall be in an amount up to twenty dollars, as established by the commissioner. There shall be no state inspection fee for inspections made within such district.

Source: **L. 87:** Entire article RC&RE, p. 1280, § 1, effective July 1. **L. 88:** (4) amended and (5) added, p. 1220, § 2, effective July 1.

35-11-106. Issuance of chemigation permit - fees. (1) On and after January 1, 1990, any person who intends to utilize chemigation shall, before commencing, file with the department an application for a chemigation permit for each irrigation system utilizing chemigation. Such application shall be on forms provided by the department.

(2) The applicant for a chemigation permit shall, on the application, certify that the irrigation system for which he is seeking a permit includes properly installed and functioning equipment in compliance with the provisions of section 35-11-107. Upon receipt of a permit, the permit holder shall attach, in a prominent place, the permit to the irrigation system for which the permit was issued.

(3) The fee for a chemigation permit and the annual renewal fee shall be established by the commissioner through rules. Such fees shall reflect all direct and indirect costs of the department for the administration of this article. The inspection fee shall be established by rule of the commissioner and shall reflect all direct and indirect costs for the inspection. A chemigation permit shall expire on March 31 of the year subsequent to the date the chemigation permit was issued. The reinstatement fee for an expired chemigation permit shall be double the amount of the fee for a chemigation permit. The reinstatement fee shall not be assessed to any person who filed an affidavit in lieu of a permit for the year prior to the year such person seeks a permit. A chemigation permit shall not be assignable. The amount of indirect costs assessed under this subsection (3) shall:

(a) Repealed.

(b) Effective July 1, 2006, be based on the number of FTE in the program expressed as a percentage of the total FTE in the department. In no case shall the indirect costs assessment exceed this percentage.

(4) In the event that a ground water management district contracts with the department for the enforcement of the provisions of this article pursuant to the provisions of section 35-11-113, the amount of the fee and annual renewal fee, for persons utilizing chemigation within such district, shall be in an amount established by the commissioner. There shall be no state inspection fee for inspections made within such district.

Source: **L. 87:** Entire article RC&RE, p. 1280, § 1, effective July 1. **L. 88:** (3) amended and (4) added, p. 1220, § 3, effective July 1. **L. 92:** Entire section amended, p. 158, § 1, effective February 25. **L. 2003:** (3) amended, p. 390, § 2, effective March 5.

Editor's note: Subsection (3)(a)(II) provided for the repeal of subsection (3)(a), effective July 1, 2006. (See L. 2003, p. 390.)

35-11-107. Equipment and installation requirements. (1) An irrigation system utilizing chemigation on and after January 1, 1990, or an irrigation system which has been issued a provisional chemigation permit shall have, as component parts thereof, a properly installed and functioning:

- (a) Backflow prevention check valve and vacuum relief valve between the main check valve and the irrigation pump;
- (b) Inspection port to check the performance of the check valve on the irrigation pipeline;
- (c) Automatic low-pressure drain placed between the main check valve and the irrigation pump so that a chemical will drain away from the source of water supply;
- (d) Check valve in the chemical injection line; and
- (e) Simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate.

(2) An irrigation system which would otherwise be subject to all of the requirements of subsection (1) of this section may be exempted from one or more of such requirements if the owner of such irrigation system can demonstrate that the possibility of the source of water from which the irrigation system draws its water cannot be polluted or contaminated as the result of utilizing such irrigation system for chemigation.

Source: L. 87: Entire article RC&RE, p. 1281, § 1, effective July 1.

35-11-108. Affidavit in lieu of permit. For the calendar year beginning January 1, 1990, and for each calendar year thereafter, the owner of an irrigation system who does not intend to utilize chemigation during the calendar year shall notify the department of such intent. Notification shall be by an affidavit provided by the department.

Source: L. 87: Entire article RC&RE, p. 1281, § 1, effective July 1.

35-11-109. Replacement or modification of equipment. Any permit holder who replaces, alters, or modifies or who authorizes the replacement, alteration, or modification of chemigation equipment for an irrigation system which has been issued a chemigation permit shall notify the department within seven days of such replacement, alteration, or modification. Such notification shall be on a form provided by the department. The permit holder shall certify that the irrigation system as replaced, altered, or modified continues to comply with the provisions of this article.

Source: L. 87: Entire article RC&RE, p. 1281, § 1, effective July 1.

35-11-110. Failure to pass inspection - summary suspension - repair orders. (1) A permit holder operating any irrigation system which does not pass an inspection due to the failure to have installed and operating any device required by section 35-11-107 or the failure to properly install such a device shall have such permit summarily suspended by the inspector at the time of the inspection. Such summary suspension shall be subject to proceedings for suspension and revocation of the permit by the commissioner in accordance with the applicable provisions of article 4 of title 24, C.R.S. Any irrigation system which has had its permit suspended or revoked shall not be used for chemigation until such irrigation system has been inspected and a reinstatement fee paid. Such reinstatement fee shall be in an amount which is double the amount of the permit fee plus the amount of the inspection fee.

(2) A permit holder operating any irrigation system which does not pass an inspection because of a defect in any device which is properly installed shall be subject to a repair order issued by the inspector at the time of inspection. The permit holder shall remedy the defect within sixty days of the issuance of the order, and the inspector shall reinspect the irrigation system within ninety days of the issuance of the repair order. Any irrigation system subject to a repair order shall not be used for chemigation until the irrigation system is reinspected and the defect remedied. A fee may be charged or collected for the reinspection in specified circumstances described in the rules and regulations.

Source: L. 87: Entire article RC&RE, p. 1282, § 1, effective July 1.

35-11-111. Inspections - entry upon land. (1) Each irrigation system for which a permit has been issued may be inspected once every two years.

(2) Prior to an inspection, the inspector shall notify a permit holder of the time and date of an inspection. The inspector shall inform the permit holder that he is entitled to be present at the inspection. If a permit holder denies access to an inspector, the inspector may seek an inspection warrant issued by the district court for the district in which the permit holder's land is located. The court shall issue such inspection warrant upon presentation by the inspector of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being violated or has been violated, or the information showing that such entry and inspection is required in order to determine whether the provisions of this article are being complied with, as the case may be, that the inspector notified the permit holder of an inspection, that the inspector was denied access by the permit holder, and a general description of the location of the affected land.

(3) Each irrigation system subject to the provisions of this article which has not been issued a permit pursuant to the provisions of this article may be inspected, without prior notice, by an inspector who has information which gives him reasonable cause to believe that any provision of this article is being violated. If the landowner denies access to the inspector, the inspector may seek an inspection warrant issued by the district court for the district in which the landowner's land is located. The district court shall issue such inspection warrant upon presentation by an inspector of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being violated or has been violated, that the landowner has denied access to the inspector, and a general description of the location of the affected land.

(4) Except as otherwise provided in section 35-11-113, inspectors shall be employees of the department.

Source: L. 87: Entire article RC&RE, p. 1282, § 1, effective July 1. L. 88: (1) amended, p. 1221, § 5, effective July 1.

35-11-112. Denial, suspension, or revocation of permit. (1) Pursuant to the applicable provisions of article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, or refuse to renew the permit of an applicant or permit holder, as the case may be, who:

(a) Fails to have installed and operating, or to have properly installed, any device required by section 35-11-107;

(b) Has used for chemigation an irrigation system which is subject to a repair order under section 35-11-110 (2) and which has not been reinspected and approved;

(c) Has utilized chemigation without a permit on or after January 1, 1990;

(d) Has utilized for chemigation any equipment which did not, at the time of such use, meet the requirements established by section 35-11-107 or by any rule or regulation adopted by the commissioner pursuant to this article;

(e) Has contaminated groundwater or surface water by the use of chemigation;

(f) Has violated any provision of this article or any rule or regulation promulgated by the commissioner pursuant to this article.

Source: L. 87: Entire article RC&RE, p. 1283, § 1, effective July 1.

35-11-113. Enforcement by ground water management districts. Any ground water management district may contract with the department to enforce the provisions of this article and the rules and regulations promulgated pursuant to this article within the boundaries of the district. Inspectors in ground water management districts which contract with the department shall be employees of the district, and the state or the department shall not be liable for the acts or omissions of such inspectors.

Source: L. 87: Entire article RC&RE, p. 1283, § 1, effective July 1.

35-11-114. Chemigation program management fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the chemigation program management fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 317, § 8, effective July 1, 2009.)

Source: L. 87: Entire article RC&RE, p. 1283, § 1, effective July 1. L. 2009: Entire section amended, (HB 09-1249), ch. 87, p. 317, § 8, effective July 1.

35-11-115. Penalties. (1) On and after January 1, 1990, any person utilizing chemigation without a permit commits a class 6 felony and shall be punished as provided in section 18-1.3-401 (1) (a) (IV), C.R.S., and by a fine not to exceed one thousand dollars.

(2) Any person who violates any provision of subsection (1) of this section shall also be subject to a civil penalty assessed by the court of not less than one hundred dollars nor more than one thousand dollars for each such violation. All civil penalties collected under this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

Source: L. 87: Entire article RC&RE, p. 1283, § 1, effective July 1. L. 88: (1) amended, p. 1221, § 4, effective July 1. L. 89: (1) amended, p. 848, § 126, effective July 1. L. 2002: (1) amended, p. 1547, § 307, effective October 1. L. 2009: (2) amended, (HB 09-1249), ch. 87, p. 317, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-11-116. Injunctive proceedings. (1) The department may, through the attorney general of the state of Colorado, apply for civil penalties and for an injunction to enjoin any person from committing any act declared to be unlawful by this article. Such application shall be heard in the district court of the county in which the grounds for the action arose.

(2) In such proceedings, if the court enters a temporary restraining order, preliminary injunction, or permanent injunction or awards civil penalties, the person against whom such injunctive order was entered or against whom such civil penalties were awarded shall pay the costs of the proceeding, including reasonable attorney fees.

Source: L. 87: Entire article RC&RE, p. 1284, § 1, effective July 1.

35-11-117. Effective date of rules and regulations. The effective date for the initial rules and regulations promulgated pursuant to this article shall be July 1, 1989.

Source: L. 88: Entire section added, p. 1221, § 6, effective July 1.

ORGANICALLY GROWN PRODUCTS

ARTICLE 11.5

Organic Certification Act

35-11.5-101.	Short title.	35-11.5-103.	Definitions.
35-11.5-102.	Legislative declaration.	35-11.5-104.	Rules.

35-11.5-105.	Delegation of duties - inspections - cooperative agreements - confidentiality.	35-11.5-111.	Denial - suspension - revocation. (Repealed)
35-11.5-106.	Organic producer certification required. (Repealed)	35-11.5-112.	Civil penalties. (Repealed)
35-11.5-107.	Organic producer certification - application - fees. (Repealed)	35-11.5-113.	Organic certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.
35-11.5-108.	Renewal. (Repealed)	35-11.5-114.	Advisory board.
35-11.5-109.	Prohibited acts. (Repealed)	35-11.5-115.	Liability.
35-11.5-110.	Administration and enforcement. (Repealed)	35-11.5-116.	Accreditation.
		35-11.5-117.	Conflict with federal law.

35-11.5-101. Short title. This article shall be known and may be cited as the “Organic Certification Act”.

Source: L. 89: Entire article added, p. 1376, § 1, effective June 6.

35-11.5-102. Legislative declaration. The general assembly declares that the purpose of this article is to provide a means for the general public to recognize and purchase organically grown agricultural products and to assist Colorado producers in the marketing of such products. The general assembly further declares that uniformity in labeling will protect both consumers and producers by providing assurance of compliance with recognized production standards.

Source: L. 89: Entire article added, p. 1376, § 1, effective June 6.

35-11.5-103. Definitions. As used in this article, unless the context otherwise requires: (1) (a) “Agricultural products” means any agricultural, horticultural, floricultural, viticultural, or vegetable product grown or produced.

(b) Nothing in paragraph (a) of this subsection (1), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(2) “Commissioner” means the commissioner of agriculture.

(3) “Department” means the department of agriculture.

(4) to (7) Repealed.

(8) “Secretary” means the United States secretary of agriculture or a representative to whom authority has been delegated to act in the secretary’s stead.

(9) “State organic certification program” or “state certification” means the program that implements 7 U.S.C. sec. 6501 et seq. and 7 CFR part 205 in Colorado in order that the state certify organic producers pursuant to 7 U.S.C. sec. 6507.

Source: L. 89: Entire article added, p. 1376, § 1, effective June 6. **L. 2002:** (8) and (9) added, p. 1112, § 3, effective June 3 and (4) to (7) repealed, p. 1111, § 2, effective October 18 (see editor’s note). **L. 2005:** (1) amended, p. 351, § 10, effective August 8.

Editor’s note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing subsections (4) to (7) is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act enacting subsections (8) and (9) and repealing subsections (4) to (7), see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-104. Rules. (1) To carry out the provisions of this article, the commissioner shall adopt appropriate rules pursuant to section 24-4-103, C.R.S., concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and implementation of this article;

(b) to (i) Repealed.

(j) The provisions of 7 U.S.C. sec. 6501 et seq. and 7 CFR part 205, applicable to the certification of organic producers;

(k) Confidentiality of information and documents pursuant to section 35-11.5-105 (4);

(l) Establishment of minimum standards for the qualification of individuals who are authorized to make inspections as agents of the commissioner under this article and who are not employees of the department.

Source: **L. 89:** Entire article added, p. 1377, § 1, effective June 6. **L. 2002:** IP(1) and (1)(a) amended and (1)(j) and (1)(k) added, p. 1112, § 4, effective June 3 and (1)(b) to (1)(i) repealed, p. 1112, § 5, effective October 18 (see editor's note). **L. 2010:** (1)(1) added, (SB 10-038), ch. 165, p. 581, § 1, effective July 1.

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing subsections (1)(b) to (1)(i) is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act amending the introductory portion to subsection (1) and subsection (1)(a), enacting subsections (1)(j) and (1)(k), and repealing subsections (1)(b) to (1)(i), see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-105. Delegation of duties - inspections - cooperative agreements - confidentiality. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), the powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(b) Inspections conducted under the state organic certification program may be performed by the commissioner or the commissioner's authorized agents.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions.

(3) The department and the commissioner shall coordinate with the secretary to implement the state organic certification program pursuant to this article.

(4) The commissioner and the commissioner's authorized representative shall maintain strict client confidentiality under the organic certification program and shall not disclose to third parties any business-related information concerning any client obtained while implementing this article; except that the secretary shall have access to such information and the following information shall be made available to the public:

(a) Certificates issued during the current calendar year and the three immediately preceding calendar years;

(b) A list of producers and handlers whose operations have been certified during the current calendar year and the three immediately preceding calendar years, including for each the name of the operation, type of operation, products produced, and the effective date of the certification;

(c) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current calendar year and the three immediately preceding calendar years; and

(d) Other business information as permitted in writing by the producer or handler.

Source: **L. 89:** Entire article added, p. 1377, § 1, effective June 6. **L. 2002:** (3) and (4) added, p. 1113, § 6, effective June 3. **L. 2010:** (1) amended, (SB 10-038), ch. 165, p. 581, § 2, effective July 1.

Cross references: For the legislative intent contained in the 2002 act enacting subsections (3) and (4), see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-106. Organic producer certification required. (Repealed)

Source: L. 89: Entire article added, p. 1377, § 1, effective June 6. L. 2002: Entire section repealed, p. 1113, § 7, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-107. Organic producer certification - application - fees. (Repealed)

Source: L. 89: Entire article added, p. 1378, § 1, effective June 6. L. 2002: Entire section repealed, p. 1114, § 8, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-108. Renewal. (Repealed)

Source: L. 89: Entire article added, p. 1378, § 1, effective June 6. L. 2002: Entire section repealed, p. 1114, § 9, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-109. Prohibited acts. (Repealed)

Source: L. 89: Entire article added, p. 1378, § 1, effective June 6. L. 93: (2) amended, p. 1791, § 84, effective June 6. L. 2002: Entire section repealed, p. 1114, § 10, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-110. Administration and enforcement. (Repealed)

Source: L. 89: Entire article added, p. 1378, § 1, effective June 6. L. 2002: Entire section repealed, p. 1114, § 11, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-111. Denial - suspension - revocation. (Repealed)

Source: **L. 89:** Entire article added, p. 1379, § 1, effective June 6. **L. 2002:** Entire section repealed, p. 1115, § 12, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative intent contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-112. Civil penalties. (Repealed)

Source: **L. 89:** Entire article added, p. 1379, § 1, effective June 6. **L. 2002:** Entire section repealed, p. 1116, § 13, effective October 18 (see editor's note).

Editor's note: Section 17 of chapter 285, Session Laws of Colorado 2002, provides that the act repealing this section is effective upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program. The state department of agriculture received accreditation from the United States department of agriculture on October 18, 2002.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-113. Organic certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees and penalties collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the organic certification fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 318, § 10, effective July 1, 2009.)

Source: **L. 89:** Entire article added, p. 1380, § 1, effective June 6. **L. 2002:** Entire section amended, p. 1116, § 14, effective June 3. **L. 2009:** Entire section amended, (HB 09-1249), ch. 87, p. 318, § 10, effective July 1.

Cross references: For the legislative intent contained in the 2002 act amending this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-114. Advisory board. (1) Effective July 1, 2010, for the purpose of assisting the commissioner in formulating rules for carrying out the provisions of this article, there is hereby created an organic certification advisory board, to be composed of twelve members appointed by the commissioner, as follows: Nine shall represent certified organic operations; one shall be a consumer representing the general public; one shall be a representative from the Colorado cooperative extension service; and one shall be a representative from the Colorado agricultural experiment station. The nine advisory board

members representing certified organic operations shall represent the following four categories of organic certification, in proportion to the number of organic operations certified in each category:

- (a) Crop production;
- (b) Livestock production;
- (c) Processing/handling; and
- (d) Wild crop handling.

(2) The members of the organic certification advisory board shall serve terms of three years and may be reappointed.

(3) Members of the advisory board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such board.

(4) (Deleted by amendment, L. 93, p. 675, § 11, effective May 1, 1993.)

Source: L. 89: Entire article added, p. 1380, § 1, effective June 6. L. 93: (1) and (4) amended, p. 675, § 11, effective May 1. L. 2010: (1) and (2) amended, (SB 10-038), ch. 165, p. 582, § 3, effective July 1.

35-11.5-115. Liability. The state assumes no liability for persons who misrepresent any agricultural product under the authority of this article.

Source: L. 89: Entire article added, p. 1381, § 1, effective June 6.

35-11.5-116. Accreditation. The commissioner shall seek accreditation from the secretary and shall create and submit a plan for the establishment of a state organic certification program to the secretary for approval pursuant to 7 U.S.C. sec. 6507.

Source: L. 2002: Entire section added, p. 1117, § 15, effective June 3.

Cross references: For the legislative intent contained in the 2002 act enacting this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

35-11.5-117. Conflict with federal law. If the secretary or a court of competent jurisdiction determines that there is a conflict between this article and any provisions of the federal "Organic Foods Production Act of 1990", 7 U.S.C. sec. 6501 et seq. or 7 CFR part 205, the provisions of the federal act and rules shall control, and the commissioner shall perform the duties and discharge the obligations contained in the federal act. If such a determination is made, the commissioner shall submit a report to the general assembly explaining the conflict.

Source: L. 2002: Entire section added, p. 1117, § 15, effective June 3.

Cross references: For the legislative intent contained in the 2002 act enacting this section, see section 1 of chapter 285, Session Laws of Colorado 2002.

FERTILIZERS

ARTICLE 12

Commercial Fertilizers and Soil Conditioners

Editor's note: This article was numbered as article 13 of chapter 6, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

35-12-101.	Short title.	35-12-111.	Misbranding.
35-12-102.	Administration of article.	35-12-112.	Adulteration.
35-12-103.	Definitions.	35-12-113.	Publications.
35-12-104.	Registration.	35-12-114.	Rules.
35-12-105.	Labels.	35-12-115.	Investigations - access - sub-poena.
35-12-106.	Distribution fees.	35-12-116.	Cancellation of registration or refusal to register.
35-12-107.	County tonnage reports. (Repealed)	35-12-117.	Stop distribution, stop use, or removal orders.
35-12-108.	Inspection, sampling, and analysis.	35-12-118.	Seizure, condemnation, and sale.
35-12-109.	Deviation from guaranteed analysis - penalties. (Deleted by amendment)	35-12-119.	Civil penalties.
35-12-110.	Commercial value. (Deleted by amendment)	35-12-120.	Exchange between manufacturers. (Deleted by amendment)

35-12-101. Short title. This article shall be known and may be cited as the “Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act”.

Source: L. 71: R&RE, p. 133, § 1. **C.R.S. 1963:** § 6-13-1. **L. 77:** Entire section amended, p. 1581, § 1, effective July 1. **L. 2008:** Entire article amended, p. 1608, § 1, effective August 5.

ANNOTATION

This article is a police measure. Durfee & Son v. Dept. of Agriculture, 151 Colo. 149, 376 P.2d 685 (1962). Son v. Dept. of Agriculture, 151 Colo. 149, 376 P.2d 685 (1962).

And no public health, safety, or morals question is involved in this article. Durfee &

35-12-102. Administration of article. This article shall be administered by the commissioner of agriculture or the commissioner’s duly authorized representatives.

Source: L. 71: R&RE, p. 133, § 1. **C.R.S. 1963:** § 6-13-2. **L. 2008:** Entire article amended, p. 1608, § 1, effective August 5.

35-12-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Availability” means the immediate potential property of a plant nutrient to be utilized by a plant and have agronomic value when used according to directions.

(2) “Bulk fertilizer”, “bulk soil conditioner”, or “bulk plant amendment” means a commercial fertilizer, soil conditioner, or plant amendment, respectively, distributed in nonpackaged form or in a container containing more than one hundred pounds.

(3) “Commercial fertilizer” means a fertilizer or other substance containing one or more essential available plant nutrients that is distributed for its plant nutrient content and is designed for use and has value in promoting plant growth. “Commercial fertilizer” does not include untreated manures, compost and treated manure distributed without commercial fertilizer labeling, soil conditioners, plant amendments, and other products exempted by rule of the commissioner.

(4) “Commission” means the state agricultural commission.

(5) “Commissioner” means the commissioner of agriculture of Colorado or the commissioner’s authorized agent.

(6) “Compost” means a substance, derived from a process of biologically degrading organic materials, that contains one or more essential available plant nutrients and complies with the minimum standards specified by rule of the commissioner that regulate compost.

(7) “Custom mix” means a commercial fertilizer, soil conditioner, or plant amendment prepared expressly for, and according to specifications furnished by, a customer prior to mixing.

(8) "Department" means the Colorado department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all employees and agents of the department.

(9) "Distribute" means to import, consign, sell, offer to sell, barter, or otherwise supply a commercial fertilizer, soil conditioner, plant amendment, compost, or manure, for use in or shipment to this state.

(10) "Distributor" means any person who distributes a commercial fertilizer, soil conditioner, plant amendment, compost, or manure.

(11) "Essential" means necessary for the maintenance and growth of plants.

(12) "Fertilizer" means a substance or product that contains one or more essential available plant nutrients.

(13) "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash in the same terms, order, and percentages as in the guaranteed analysis.

(14) (a) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	percent
Available Phosphate (P_2O_5)	percent
Soluble Potash (K_2O)	percent

(b) Guarantees for plant nutrients, other than nitrogen, phosphorus, and potassium, may be permitted or required by rule of the commissioner. The guarantees for these other nutrients shall be expressed in the form, availability, and minimum quantity of the element set by rule. The sources of nutrients, salts, chelates, and similar compounds are required to be stated on the application for registration and may be included as a parenthetical statement on the label.

(c) Guaranteed analysis of a custom mix may appear as in paragraph (a) of this subsection (14) or may include the net weight and guaranteed analysis of each plant nutrient or fertilizer in the mix.

(15) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer, soil conditioner, or plant amendment.

(16) "Label" means the display of all written, printed, or graphic matter on the immediate container of, or a statement accompanying, a commercial fertilizer, soil conditioner, plant amendment, compost, or manure.

(17) "Labeling" means all written, printed, graphic, or verbal information on, accompanying, or used in promoting any commercial fertilizer, soil conditioner, plant amendment, compost, or manure, including advertisements, brochures, and posters and television, radio, and internet announcements.

(18) "Manufacturing facility" means any place where a commercial fertilizer, soil conditioner, plant amendment, or compost is manufactured, produced, compounded, mixed, blended, or in any way altered chemically or physically. Mobile units shall be considered a part of the manufacturing facility where the units are based.

(19) "Manure" means animal or vegetable manure and includes treated and untreated manure.

(20) "Official sample" means any sample of commercial fertilizer, soil conditioner, plant amendment, compost, or manure that is taken and designated as "official" by the department.

(21) "Packaged fertilizer", "packaged soil conditioner", or "packaged plant amendment" means a commercial fertilizer, soil conditioner, or plant amendment, respectively, that is distributed in a closed container and contains one hundred pounds or less of the commercial fertilizer, soil conditioner, or plant amendment.

(22) "Percent" or "percentage" means the percentage by weight.

(23) "Plant amendment and soil conditioner guaranteed analysis" means the percentage of each of the ingredients.

(24) "Plant amendments" means any devices or substances applied to the soil, plants, or seeds that are intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants. "Plant amendments" does not include commercial fertilizers, soil amendments, untreated manures, pesticides, plant

regulators, compost and treated manures that are distributed without plant amendment labeling, or other materials exempted by rules promulgated by the commissioner.

(25) "Plant nutrients" means those chemical or organic forms of nitrogen (N), phosphorus (P_2O_5), potassium (K_2O), other secondary and micronutrients, calcium (Ca), magnesium (Mg), sulfur (S), boron (B), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), or zinc (Zn) that are absorbed by crops and are essential to the plants.

(26) "Product" means a commercial fertilizer, plant amendment, or soil conditioner in the form in which it is intended to be distributed. For the purposes of this article, a product that differs from another product in the name of the product, composition, labeling claims or directions for use, grade, or guaranteed analysis shall be considered a separate product that requires its own registration.

(27) "Registrant" means a person who is registered or is required to be registered to manufacture or distribute commercial fertilizers, soil conditioners, plant amendments, or compost under the provisions of this article.

(28) "Sewage sludge, sewage effluents, and biosolids" means all materials resulting from domestic wastewater treatment that contain concentrations of organic or inorganic materials.

(29) "Soil conditioner" means a substance, defined by rule of the commissioner, intended to improve the chemical or physical characteristics of the soil that is sold, offered for sale, or intended for sale. It does not include commercial fertilizers, plant amendments, untreated manures, compost and treated manures that are distributed without soil conditioner labeling claims, or any other materials that may be exempted by rule of the commissioner. Soil conditioners may be sold in package or in bulk.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, hydroponic facilities, and nurseries.

(31) "Ton" means a net weight of two thousand pounds avoirdupois.

(32) "Treated manures" means substances composed primarily of excreta, plant or animal material, sewage sludge, sewage effluents, and biosolids, or mixtures of such substances that have been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

(33) "Untreated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances that have not been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

Source: L. 71: R&RE, p. 133, § 1. C.R.S. 1963: § 6-13-3. L. 77: Entire section R&RE, p. 1581, § 2, effective July 1. L. 96: (2), (16)(a)(I), (16)(b), and (20) amended, p. 101, § 1, effective March 20. L. 2008: Entire article amended, p. 1608, § 1, effective August 5.

35-12-104. Registration. (1) Each product shall be registered by the person whose name appears on the label before being distributed in, into, or for use in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee established by the commission. Except as provided in subsection (1.5) of this section, for each fiscal year, commencing on July 1, fifty percent of the department's direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. All registrations shall expire annually on the date specified by rule of the commissioner. Applications for renewal of registrations must be submitted on or before such date. Each application for registration or renewal of registration shall include the following information:

- (a) The name and address of the registrant;
- (b) The name of the product;
- (c) The grade, if a commercial fertilizer;
- (d) The guaranteed analysis;

(e) The sources from which the guaranteed plant nutrients, soil conditioner, or plant amendment derive; and

(f) One copy of the label used in this state for the sale of each of the products being registered.

(1.5) Repealed.

(2) The registration requirements of subsection (1) of this section shall not apply to custom mix fertilizers, untreated manure, or compost and treated manures that are distributed without commercial fertilizer, plant amendment, or soil conditioner labeling claims.

(3) The commissioner may require proof of labeling statements and other claims made for any commercial fertilizer, soil conditioner, or plant amendment before approving any registration. If the registrant makes no claims, the commissioner may require proof of the usefulness and value of the commercial fertilizer, soil conditioner, or plant amendment. As evidence of proof, the commissioner may rely on experimental data, evaluations, or advice furnished by experts such as Colorado state university and may accept or reject additional sources of proof in evaluating any commercial fertilizer, soil conditioner, or plant amendment. In all cases, only experimental proof shall relate to those conditions in Colorado for which use the product is intended.

(4) Commercial fertilizer shall contain the minimum stipulated quantities of plant nutrients required by rules promulgated by the commissioner.

(5) The commissioner may stipulate by rule the quantities of active substances required in soil conditioners or plant amendments to be sold or distributed for use in this state.

(6) No commercial fertilizer, soil conditioner, or plant amendment shall be sold or distributed for use in this state without a current registration. Any person who fails to renew the registration of commercial fertilizer, soil conditioner, or plant amendment on or before the expiration date of the registration shall pay a late fee, as established by the commission, in addition to the registration fee.

(7) Each manufacturing facility that produces custom mixes in this state must be registered. All registrations shall expire annually on the date specified by rule of the commissioner. Applications for renewal of registrations must be submitted on or before such date.

(8) (a) Each manufacturing facility in this state producing compost that is distributed without commercial fertilizer, plant amendment, or soil conditioner claims shall register with the commissioner unless exempted by rule of the commissioner.

(b) The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee established by the commission. Any person who fails to renew said manufacturing facility registration shall pay a late fee, as established by the commission, in addition to the registration fee.

(c) At the time of registration, each manufacturing facility shall submit copies of all labels that will be affixed to or accompany the compost products it distributes.

Source: L. 71: R&RE, p. 136, § 1. C.R.S. 1963: § 6-13-4. L. 77: Entire section R&RE, p. 1585, § 3, effective July 1. L. 96: (2) and (3) repealed, p. 102, § 2, effective March 20. L. 98: (1.5) added, p. 1341, § 64, effective June 1. L. 2003: IP(1) and (7) amended, p. 1725, § 5, effective May 14. L. 2005: IP(1) and (7) amended, p. 1268, § 6, effective July 1. L. 2007: IP(1) and (7) amended, p. 1903, § 4, effective July 1. L. 2008: Entire article amended, p. 1613, § 1, effective August 5. L. 2010: IP(1) amended and (1.5) added, (HB 10-1377), ch. 212, p. 921, § 1, effective May 6.

Editor's note: Subsection (1.5)(b) provided for the repeal of subsection (1.5), effective July 1, 2012. (See L. 2010, p. 921.)

ANNOTATION

This section relates only to commercial fertilizer or soil amendments. *Durfee & Son v.*

Dept. of Agriculture, 151 Colo. 149, 376 P.2d 685 (1962).

35-12-105. Labels. (1) Any packaged commercial fertilizer distributed in this state shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The name and address of the registrant;
- (b) The net weight or other measure prescribed by rule;
- (c) The name of the product and grade;
- (d) The guaranteed analysis in the form specified in section 35-12-103 (14) (a);
- (e) The date of manufacture, processing, packaging, or repackaging, or a code that permits the determination of such date, or, if distributed in bulk, the shipment or delivery date;
- (f) Directions for use as specified by rule of the commissioner.

(2) Any commercial fertilizer distributed in this state in bulk shall be accompanied by a printed or written statement showing the information required in subsection (1) of this section.

(3) Any packaged soil conditioner or plant amendment distributed in this state shall have placed or affixed on the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The name and address of the registrant;
- (b) The net weight or other measure prescribed by rule;
- (c) The name of the product;
- (d) An accurate statement of composition, including the percent of each ingredient;
- (e) The purpose of the product;
- (f) The date of manufacture, processing, packaging, or repackaging, or a code that permits determination of the date, or, if distributed in bulk, the shipment or delivery date;
- (g) Directions for use as specified by rule of the commissioner.

(4) Any soil conditioner or plant amendment distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (3) of this section.

(5) Any custom mix delivered in containers shall have placed on or affixed to the container a label, or if delivered in bulk, shall be accompanied by a printed or written statement, which label and statement shall set forth the following information:

- (a) The name and address of the manufacturer;
- (b) The net weight or measure as prescribed by rule of the commissioner;
- (c) The guaranteed analysis and quantity of each registered product contained in the mix;
- (d) The date on which the product was manufactured or delivered; and
- (e) Directions for use as specified by rule of the commissioner.

(6) No product may be labeled, advertised, distributed, or sold as a commercial fertilizer, soil conditioner, or plant amendment unless its substance conforms to the applicable definitions prescribed in this article or in the rules promulgated by the commissioner pursuant to this article.

(7) No additional substances other than those allowed in section 35-12-103 (12) may be listed or guaranteed on a label or labeling or on a written statement accompanying the bulk distribution of commercial fertilizers, soil conditioners, or plant amendments without the permission of the commissioner. The commissioner may allow additional substances to be listed or guaranteed on the label, labeling, or written statement if satisfactory supportive data is furnished to the commissioner in order to substantiate the value and usefulness of the substance. The commissioner may rely on sources other than the department, such as Colorado state university, for assistance in evaluating the supportive data. If the commissioner permits such additional substances to be listed or guaranteed, the nature of the substances shall be determinable by laboratory methods. The substances shall be subject to inspection and analysis pursuant to methods and procedures prescribed by the commissioner by rule.

(8) The commissioner may allow or require commercial fertilizers, soil conditioners, or plant amendments to be sold and labeled by volume in addition to or instead of by weight pursuant to rules promulgated by the commissioner.

Source: L. 71: R&RE, p. 137, § 1. C.R.S. 1963: § 6-13-5. L. 77: Entire section R&RE, p. 1587, § 4, effective July 1. L. 96: (3)(f) repealed, p. 102, § 3, effective March 20. L. 2008: Entire article amended, p. 1615, § 1, effective August 5.

ANNOTATION

This section requires labeling of all commercial fertilizers offered for sale or distrib-

uted. *Durfee & Son v. Dept. of Agriculture*, 151 Colo. 149, 376 P.2d 685 (1962).

35-12-106. Distribution fees. (1) All registrants, except those who package only in containers of ten pounds or less, shall pay the commissioner a distribution fee as established by the commission for all commercial fertilizers, soil conditioners, or plant amendments distributed in this state. For the purpose of funding the department's groundwater protection efforts, an additional fee per ton of commercial fertilizer shall be paid to the commissioner as established by the commission. This increment per ton of commercial fertilizer shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(2) Registrants of specialty fertilizers, soil conditioners, or plant amendments packaged in containers of ten pounds or less shall pay the commissioner a distribution fee as established by the commission, for all specialty fertilizers, soil conditioners, or plant amendments distributed in this state.

(3) Each person registering any commercial fertilizer, soil conditioner, or plant amendment and each person producing custom mixes in this state shall keep adequate records showing the pounds or tonnage distributed in this state, and the commissioner has the authority to examine such records to verify the statement of pounds or tonnage.

(4) Each registrant shall file an affidavit with the commissioner within forty-five days after the date specified by rule of the commissioner that discloses the pounds or tonnage of commercial fertilizer, soil conditioner, or plant amendment distributed in the state during the preceding twelve-month period and any other information as required by rules adopted by the department. If the affidavit is not filed and the distribution fee is not paid within the forty-five-day period, or if the report of pounds or tonnage is false, the commissioner may revoke the registration and assess a penalty established by the commission. The distribution fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant.

(5) When more than one person is involved in the distribution of a commercial fertilizer, soil conditioner, or plant amendment, the last registrant to distribute the product is responsible for reporting the annual pounds or tonnage and paying the distribution fee, unless the annual report and payment has been made by a prior distributor.

(6) Distribution fees are not required for ingredients that have already been included in the tonnage or pounds for which a Colorado distribution fee has been paid.

(7) The distribution fees required to be paid by this section shall not apply to untreated manure or compost and treated manure distributed without commercial fertilizer, soil conditioner, or plant amendment labeling claims.

(8) (a) Except as provided in paragraph (b) of this subsection (8), for each fiscal year, commencing July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) Repealed.

Source: L. 71: R&RE, p. 138, § 1. C.R.S. 1963: § 6-13-6. L. 77: Entire section amended, p. 1588, § 5, effective July 1. L. 90: (1) amended, p. 1334, § 7, effective July 1. L. 96: (4) amended, p. 103, § 4, effective March 20. L. 98: (8) added, p. 1341, § 65, effective June 1. L. 2003: (1) and (2) amended and (9) added, p. 1726, § 6, effective May

14. **L. 2005:** (1), (2), and (9) amended, p. 1269, § 7, effective July 1. **L. 2007:** (1), (2), and (9) amended, p. 1904, § 5, effective July 1. **L. 2008:** Entire article amended, p. 1617, § 1, effective August 5. **L. 2009:** (1) amended, (HB 09-1249), ch. 87, p. 320, § 16, effective July 1. **L. 2010:** (8) amended, (HB 10-1377), ch. 212, p. 922, § 2, effective May 6.

Editor's note: Subsection (8)(b)(II) provided for the repeal of subsection (8)(b), effective July 1, 2012. (See L. 2010, p. 922.)

ANNOTATION

Applied in *Durfee & Son v. Dept. of Agriculture*, 151 Colo. 149, 376 P.2d 685 (1962).

35-12-107. County tonnage reports. (Repealed)

Source: **L. 71:** R&RE, p. 138, § 1. **C.R.S. 1963:** § 6-13-7. **L. 77:** IP(1) and (1)(b) amended and (3) added, p. 1589, § 6, effective July 1. **L. 96:** Entire section repealed, p. 103, § 5, effective March 20. **L. 2008:** Entire article amended, p. 1619, § 1, effective August 5.

Editor's note: Although this section was repealed in 1996, it was contained in a 2008 act that amended this entire article.

35-12-108. Inspection, sampling, and analysis. (1) The commissioner shall sample, inspect, make analyses of, and test commercial fertilizers, soil conditioners, plant amendments, and compost distributed within this state at such time and place and to such an extent as the commissioner deems advisable to determine whether such products are in compliance with the provisions of this article. The commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to access commercial fertilizers, soil conditioners, plant amendments, and compost subject to the provisions of this article and the rules adopted pursuant to this article.

(2) The methods of analysis and sampling shall be those adopted by the commissioner from sources including the association of official analytical chemists international or a successor organization, Colorado state university, or other authoritative sources deemed reliable by the commissioner.

(3) The commissioner, in determining whether any commercial fertilizer, soil conditioner, plant amendment, or compost violates this article, shall base such determination solely upon official samples obtained and analyzed in accordance with subsections (1) and (2) of this section.

(4) The result of an analysis of a sample of any commercial fertilizer, soil conditioner, plant amendment, or compost that indicates a deficiency shall be forwarded promptly to the registrant. Upon request within thirty days after the date the analysis report is forwarded, the commissioner shall furnish to the registrant a portion of any official sample. If, within forty-five days after forwarding of the analysis report indicating a deficiency, no adequate evidence contradicting the analysis report is made available to the commissioner, the report of the sample analysis shall become official.

Source: **L. 71:** R&RE, p. 139, § 1. **C.R.S. 1963:** § 6-13-8. **L. 77:** Entire section amended, p. 1590, § 7, effective July 1. **L. 2008:** Entire article amended, p. 1619, § 1, effective August 5.

35-12-109. Deviation from guaranteed analysis - penalties. (Deleted by amendment)

Source: L. 71: R&RE, p. 139, § 1. **C.R.S. 1963:** § 6-13-9. **L. 77:** (2) and (3) amended, p. 1590, § 8, effective July 1. **L. 96:** (1) amended, p. 103, § 6, effective March 20. **L. 2008:** Entire article amended, p. 1619, § 1, effective August 5.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 1619.)

35-12-110. Commercial value. (Deleted by amendment)

Source: L. 71: R&RE, p. 140, § 1. **C.R.S. 1963:** § 6-13-10. **L. 77:** Entire section amended, p. 1591, § 9, effective July 1. **L. 2008:** Entire article amended, p. 1620, § 1, effective August 5.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 1620.)

35-12-111. Misbranding. (1) No person shall distribute a misbranded product. A commercial fertilizer, soil conditioner, plant amendment, or compost is misbranded:

- (a) If its labeling is false or misleading in any particular;
- (b) If it is distributed under the name of another product;
- (c) If it is not labeled as required in section 35-12-105 and in accordance with rules prescribed under this article;

(d) (I) If it purports to be, is represented as, or is represented as containing a commercial fertilizer, soil conditioner, plant amendment, or compost, unless the plant nutrient, commercial fertilizer, soil conditioner, plant amendment, or compost conforms to the definitions of terms prescribed by this article or under the rules promulgated by the commissioner.

(II) In the adoption of such rules, the commissioner shall give due regard to commonly accepted definitions and official terms such as those issued by the association of American plant food control officials or a successor organization.

(e) If it does not conform to the ingredient form, availability, minimums, labeling, and investigational allowances set forth in the rules promulgated by the commissioner.

Source: L. 71: R&RE, p. 140, § 1. **C.R.S. 1963:** § 6-13-11. **L. 77:** Entire section R&RE, p. 1591, § 10, effective July 1. **L. 2008:** Entire article amended, p. 1620, § 1, effective August 5.

35-12-112. Adulteration. (1) No person shall distribute an adulterated product. A commercial fertilizer, soil conditioner, plant amendment, or compost is deemed adulterated:

(a) If it contains any deleterious or harmful substance in sufficient amount to render it injurious to human health or beneficial plant, animal, or aquatic life, when applied in accordance with directions for use on the label or normal application practices, or if adequate warning statements or directions for use, which may be necessary to protect human health or beneficial plant, animal, or aquatic life, are not shown on the label;

(b) If its composition falls below or differs from that which it is purported to possess by its labeling;

(c) If it contains unwanted crop seed or weed seed;

(d) If the concentration of any metal in the product exceeds the level established for that constituent by rule of the commissioner; or

(e) If it contains an infectious agent in sufficient amount to render it injurious to human health or beneficial plant, animal, or aquatic life.

Source: L. 71: R&RE, p. 140, § 1. **C.R.S. 1963:** § 6-13-12. **L. 77:** IP(1) and (1)(a) amended, p. 1592, § 11, effective July 1. **L. 2008:** Entire article amended, p. 1621, § 1, effective August 5.

ANNOTATION

Buyers of commercial fertilizer are within the class of persons to be protected by this section and may base a claim of negligence per se on a violation of this section. *Deacon v. Am.*

Plant Food Corp., 782 P.2d 861 (Colo. App. 1989), rev'd on other grounds sub nom. *Stone's Farm Supply, Inc. v. Deacon*, 805 P.2d 1109 (Colo. 1991).

35-12-113. Publications. The commissioner shall publish at least annually, in such form as the commissioner deems proper, information concerning the sales of commercial fertilizers, soil conditioners, and plant amendments, together with such data on their production and use as the commissioner considers advisable, and a report of the results of the analyses based on official samples of commercial fertilizers, soil conditioners, and plant amendments sold within the state as compared with the analyses guaranteed under sections 35-12-103 (14), 35-12-104, and 35-12-105. Information concerning the sale, production, and use of commercial fertilizers, soil conditioners, and plant amendments shall not identify or otherwise disclose the operations of any person.

Source: L. 71: R&RE, p. 140, § 1. **C.R.S. 1963:** § 6-13-13. **L. 77:** Entire section amended, p. 1592, § 12, effective July 1. **L. 2008:** Entire article amended, p. 1621, § 1, effective August 5.

35-12-114. Rules. The commissioner is authorized, pursuant to section 24-4-103, C.R.S., to adopt and enforce rules to implement, administer, and enforce this article. The rules shall include, but are not limited to, rules relating to sampling, analytical methods, ingredient form, availability, minimums, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling, commercial fertilizers, specialty fertilizers, soil conditioners, plant amendments, and compost, as may be necessary to carry into effect the full intent and meaning of this article. The commissioner shall not adopt any rule that is inconsistent with a rule promulgated by a state entity for any substance governed by this article.

Source: L. 71: R&RE, p. 141, § 1. **C.R.S. 1963:** § 6-13-14. **L. 77:** Entire section amended, p. 1592, § 13, effective July 1. **L. 2008:** Entire article amended, p. 1621, § 1, effective August 5.

35-12-115. Investigations - access - subpoena. (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make any investigations necessary to ensure compliance with this article.

(2) (a) At any time during regular business hours, for the purpose of carrying out any provision of this article or any rule made pursuant to this article, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(I) To all buildings, yards, warehouses, storage facilities, vehicles, and any other public or private properties, premises, or carriers in which any commercial fertilizer, soil conditioner, plant amendment, or compost is kept, stored, handled, processed, distributed, or transported;

(II) To all business records related to the production or distribution of any commercial fertilizer, soil conditioner, plant amendment, or compost, including but not limited to any records required to be kept by this article or any rule promulgated pursuant to this article. The commissioner may also make copies of such records.

(b) The commissioner shall have full authority to administer oaths and take statements; to issue administrative subpoenas requiring the attendance of witnesses before the commissioner and the production of all books, memoranda, papers, and other documents, articles, or instruments; and to compel the disclosure by witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court and, upon a proper

showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(3) Complaints of record made to the commissioner and the results of the investigations of the commissioner may, in the discretion of the commissioner, be closed to public inspection, except as permitted by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served. Any action taken by the commissioner shall be a public record as defined in section 24-72-202, C.R.S.

Source: L. 71: R&RE, p. 141, § 1. C.R.S. 1963: § 6-13-15. L. 77: Entire section amended, p. 1592, § 14, effective July 1. L. 2008: Entire article amended, p. 1622, § 1, effective August 5.

35-12-116. Cancellation of registration or refusal to register. (1) The commissioner may revoke or suspend the registration of or may refuse to register any commercial fertilizer, soil conditioner, or plant amendment upon a finding supported by satisfactory evidence that the registrant or person applying for registration has violated any provision of this article or any rule adopted pursuant to this article. No registration shall be refused, suspended, or revoked until the registrant has been given the notice and opportunity of a hearing required by article 4 of title 24, C.R.S.

(2) The commissioner may revoke or suspend the registration of or may refuse to register any manufacturing facility required to be registered under section 35-12-104 (7) or (8) upon a finding that the registrant or person applying for registration has submitted false information to the commissioner or has violated any provision of this article or any rule adopted pursuant to this article. No registration shall be refused, suspended, or revoked until the registrant has been given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

Source: L. 71: R&RE, p. 141, § 1. C.R.S. 1963: § 6-13-16. L. 77: Entire section amended, p. 1593, § 15, effective July 1. L. 2008: Entire article amended, p. 1623, § 1, effective August 5.

35-12-117. Stop distribution, stop use, or removal orders. (1) The commissioner may issue and enforce a written or printed stop distribution, stop use, or removal order directed to the owner or custodian of any lot of commercial fertilizer, soil conditioner, plant amendment, or compost when the commissioner finds the commercial fertilizer, soil conditioner, plant amendment, or compost is being distributed or used in violation of any of the provisions of this article. The commissioner shall release the commercial fertilizer, soil conditioner, plant amendment, or compost peat moss, or peat humus from the order when the owner or custodian has complied with requirements of this article and has paid all costs and expenses incurred in connection with the entry and enforcement of such order. Any person who has received a stop distribution, stop use, or removal order may request a hearing, pursuant to article 4 of title 24, C.R.S., to determine whether the violation occurred.

(2) In the event that a person fails to comply with a stop distribution, stop use, or removal order within twenty-four hours after the issuance of the order, the commissioner may bring suit for a temporary restraining order and injunctive relief in order to prevent any further or continued violation of such order.

(3) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(4) Whenever the commissioner possesses evidence satisfactory to the commissioner that a person has engaged or is about to engage in a violation of this article or rules adopted pursuant to this article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article and rules adopted pursuant to this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 71: R&RE, p. 141, § 1. C.R.S. 1963: § 6-13-17. L. 77: Entire section amended, p. 1593, § 16, effective July 1. L. 2008: Entire article amended, p. 1623, § 1, effective August 5.

35-12-118. Seizure, condemnation, and sale. Any lot of commercial fertilizer, soil conditioner, plant amendment, or compost that is in violation of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which the product is located. In the event the court finds the product to be in violation of this article and orders the condemnation of the product, it shall be disposed of in any manner consistent with the quality of the product and the laws of this state. In no instance shall the disposition of the commercial fertilizer, soil conditioner, plant amendment, or compost be ordered by the court without first affording the owner an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this article.

Source: L. 71: R&RE, p. 141, § 1. C.R.S. 1963: § 6-13-18. L. 77: Entire section amended, p. 1593, § 17, effective July 1. L. 2008: Entire article amended, p. 1624, § 1, effective August 5.

35-12-119. Civil penalties. (1) Any person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 71: R&RE, p. 141, § 1. C.R.S. 1963: § 6-13-19. L. 2008: Entire article amended, p. 1624, § 1, effective August 5.

35-12-120. Exchange between manufacturers. (Deleted by amendment)

Source: L. 71: R&RE, p. 142, § 1. C.R.S. 1963: § 6-13-20. L. 77: Entire section amended, p. 1594, § 18, effective July 1. L. 2008: Entire article amended, p. 1625, § 1, effective August 5.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 1625.)

ARTICLE 13

Anhydrous Ammonia

35-13-101.	Legislative declaration.		- prohibitions.
35-13-102.	Definitions.	35-13-107.	Enforcement - investigation -
35-13-103.	Commissioner to promulgate rules.		access to locations and re-
35-13-104.	Condition of equipment.	35-13-108.	records.
35-13-105.	Restriction of use of contain-	35-13-109.	Civil penalties.
	ers.		Registration - application -
35-13-106.	Effect of rules and regulations		fees.

35-13-101. Legislative declaration. (1) This is an article to prescribe uniform regulations in this state for safety in the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank or tank trailer, and utilizing anhydrous ammonia as an agricultural fertilizer; and to provide for the enjoining or abatement of violations of regulations issued under this article; and to prohibit the refilling or use of such containers without authorization by the owner thereof; and to prohibit the adoption by municipalities or other political subdivisions of ordinances or regulations in conflict with this article.

(2) The general assembly hereby declares that any violation of this article or rules promulgated pursuant to this article shall constitute a substantial danger to public health and safety.

Source: L. 67: p. 325, § 1. C.R.S. 1963: § 6-17-1. L. 2008: Entire section amended, p. 633, § 1, effective August 5.

35-13-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Anhydrous ammonia" means the compound formed by the combination of the two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume in compressed and liquefied form.

(2) "Commissioner" means the commissioner of agriculture.

Source: L. 67: p. 325, § 2. C.R.S. 1963: § 6-17-2.

35-13-103. Commissioner to promulgate rules. The commissioner shall, in addition to other relevant criteria, use as a guide to make, promulgate, and enforce rules setting forth minimum general safety standards covering the design, construction, location, installation, and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia fertilizer such standards as provided in American national standards institute standard K61.1-1999, or subsequent revisions thereof. Said rules shall be as are reasonably necessary for the protection of the safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the commissioner only after a public hearing thereon.

Source: L. 67: p. 325, § 3. C.R.S. 1963: § 6-17-3. L. 2003: Entire section amended, p. 1726, § 7, effective May 14.

Cross references: For rule-making procedures, see article 4 of title 24.

35-13-104. Condition of equipment. All equipment shall be installed and maintained in a safe operating condition and in conformity with the rules and regulations adopted under section 35-13-103.

Source: L. 67: p. 326, § 4. C.R.S. 1963: § 6-17-4.

35-13-105. Restriction of use of containers. (1) No person, firm, or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver, or permit to be delivered, or use in any manner any anhydrous ammonia storage tank, mobile transportation tank, or tank-mounted applicator for any other purpose whatsoever.

(2) No person shall fill, refill, deliver, or permit to be delivered any anhydrous ammonia storage tank, mobile transportation tank, or tank-mounted applicator that has not been registered in compliance with the provisions of this article and rules promulgated pursuant to this article.

Source: L. 67: p. 326, § 5. C.R.S. 1963: § 6-17-5. L. 2003: Entire section amended, p. 2387, § 4, effective July 1, 2004. L. 2008: Entire section amended, p. 633, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 360, Session Laws of Colorado 2003.

35-13-106. Effect of rules and regulations - prohibitions. The rules and regulations promulgated pursuant to this article shall have uniform force and effect throughout the state, and no municipality or other political subdivision shall enact or enforce any ordinances, rules, or regulations which do not meet the rules and regulations promulgated pursuant to this article; except that home rule cities enforcing ordinances, rules, and regulations equal to or more stringent than those prescribed under this article may continue to perform such functions.

Source: L. 67: p. 326, § 6. C.R.S. 1963: § 6-17-6.

35-13-107. Enforcement - investigation - access to locations and records. (1) The commissioner, pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall enforce the provisions of this article and of rules promulgated pursuant to this article or section 35-1-107 (5).

(2) Upon the commissioner's own motion or upon the complaint of any person, the commissioner may make any investigations necessary to ensure compliance with this article.

(3) At any time during regular business hours, upon consent or upon obtaining an administrative search warrant and for the purpose of enforcing any provision of this article or rule promulgated pursuant to this article, the commissioner shall have free and unimpeded access to:

(a) All buildings, yards, warehouses, storage facilities, tanks, tank trailers, vehicles, and any other public or private property, premises, or carriers in which anhydrous ammonia is kept, stored, handled, distributed, or transported; and

(b) All business records required to be kept that relate to the storage, use, transportation, or distribution of anhydrous ammonia. The commissioner may make copies of such records.

(4) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule promulgated pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing on the order involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before the commissioner and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey an administrative subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and

testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(6) Whenever the commissioner considers that a violation of any provision of this article or rule promulgated pursuant to this article has occurred or will occur, and that immediate and irreparable injury, loss, or damage will result if such violation is not immediately restrained or enjoined, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule promulgated pursuant to this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 67: p. 326, § 7. C.R.S. 1963: § 6-17-7. L. 2003: IP(1) and (1)(a) amended, p. 1727, § 8, effective May 14. L. 2008: Entire section amended, p. 634, § 3, effective August 5.

35-13-108. Civil penalties. (1) (a) The commissioner may impose a civil penalty on any person who violates any provision of this article or any rule adopted under this article or under section 35-1-107 (5). Such penalty shall not exceed seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect, or if any person fails to pay, all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 67: p. 326, § 8. C.R.S. 1963: § 6-17-8. L. 2003: Entire section amended, p. 1727, § 9, effective May 14. L. 2005: (4) amended, p. 1270, § 8, effective July 1. L. 2007: (4) amended, p. 1904, § 6, effective July 1.

35-13-109. Registration - application - fees. (1) On or before the date specified by rule of the commissioner each year, every person who owns one or more anhydrous ammonia storage tanks, mobile transportation tanks, or tank-mounted applicators within this state shall register each of such tanks or applicators with the department and shall pay a registration fee as established by the agricultural commission. A registration is not transferable. No reduction of a registration fee shall be made for a fractional part of a year.

(2) An application for registration shall state:

- (a) The name of the applicant;
- (b) If the applicant is a firm, the names of its members;
- (c) If the applicant is a corporation, the names of its officers;
- (d) The applicant's business address;
- (e) The applicant's telephone number;
- (f) The name and location of each fixed bulk facility; and
- (g) The serial number or other identifying number of each mobile transportation tank or tank-mounted applicator.

(3) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish a fee schedule to cover all of the direct and indirect costs of administering and enforcing the provisions of this article.

(4) (a) All fees, fines, and penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) Fees established pursuant to this section shall be reported, on or before December 1 of each year, to the agriculture, natural resources, and energy committee of the senate and the agriculture, livestock, and natural resources committee of the house of representatives.

Source: L. 2003: Entire section added, p. 1727, § 10, effective May 14. **L. 2005:** (4)(a) amended, p. 1270, § 9, effective July 1. **L. 2007:** (3) and (4)(a) amended, p. 1904, § 7, effective July 1. **L. 2008:** (1) amended, p. 635, § 4, effective August 5.

WEIGHTS AND MEASURES

ARTICLE 14

Measurement Standards

Editor's note: This article was numbered as article 1 of chapter 152, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1983, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

35-14-101.	Short title.	35-14-120.	Declaration of unit price on random-weight packages.
35-14-102.	Definitions.	35-14-121.	Weigher - qualification - certification - revocation.
35-14-103.	Systems of weights and measures - customary or metric.	35-14-122.	Public scales - requirements - weight certificates - procedures - records.
35-14-104.	Physical standards.	35-14-123.	Weighing and measuring device service providers - certification - fees - placing in service - rules.
35-14-105.	Technical requirements for weighing and measuring devices - certificate required - exception.	35-14-124.	Inaccurate devices - stickers - tags - wire seals - rules.
35-14-106.	Administration.	35-14-124.5.	Disciplinary powers.
35-14-107.	Powers and duties of commissioner - rules.	35-14-125.	Household scales. (Repealed)
35-14-108.	Special police powers.	35-14-126.	Commercial weighing device exemption - licensing - testing.
35-14-109.	Contract services. (Repealed)	35-14-127.	Licenses - fees - rules - stickers - certificates.
35-14-110.	Misrepresentation of quantity.	35-14-128.	Laboratory approval - service - condemnation.
35-14-111.	Misrepresentation of price.	35-14-129.	Moisture-testing devices and grain protein analyzers - specifications.
35-14-112.	Method of sale - general.	35-14-130.	Stop sale order.
35-14-113.	Method of sale - special food products. (Repealed)	35-14-131.	Civil penalties.
35-14-114.	Method of sale - special non-food products. (Repealed)	35-14-132.	Criminal penalties.
35-14-115.	Machine vended commodities.	35-14-133.	Enforcement.
35-14-116.	Railroad car tare weights.	35-14-134.	Repeal of sections - review of functions.
35-14-117.	Unit pricing - application - inch pound or metric.		
35-14-118.	Declarations on packages.		
35-14-119.	Misleading packages - allowances.		

35-14-101. Short title. This article shall be known and may be cited as the "Measurement Standards Act of 1983".

Source: L. 83: Entire article R&RE, p. 1339, § 1, effective July 1.

35-14-102. Definitions. As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(1.7) "Certificate of conformance" means a document issued by the national type evaluation program constituting evidence of conformance of a weighing and measuring device with the requirements of national institute of standards and technology handbook 44.

(2) "Certified scales" means scales located throughout the state which are used for public weighing and which meet the requirements of certification.

(3) "Certified weighers" means a natural person who is certified under the provisions of this article.

(4) "Commercial weighing and measuring devices" means those devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption that are sold or offered or exposed for sale or hire or in computing any basic charge or payment for services rendered on the basis of weight, measure, or count.

(4.5) "Commission" means the state agricultural commission.

(5) "Commissioner" means the commissioner of agriculture.

(5.5) "Commodity" means any agricultural commodity, consumer commodity, or any other goods.

(6) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form but on which there is marked a selling price based on an established price per unit of weight or of measure shall be construed to be a commodity in package form. The term "package" shall be construed to mean "commodity in package form".

(7) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(8) "Correct" means conformance to all applicable requirements of this article.

(9) "Department" means the department of agriculture.

(9.5) "Grain protein analyzer" means the equipment and accessories used to determine the protein content of grain.

(10) "Grain sample" means that portion of a grain, seed, or other agricultural commodity taken from the bulk of grain, seed, or other agricultural commodity for the purpose of determining moisture content.

(11) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(12) "Inch pound system" means the United States customary system of weights and measures as approved by the United States department of commerce.

(13) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, molded into, formed upon, embossed upon, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package; except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this article.

(14) "Laboratory" means the metrology laboratory of the division of inspection and consumer services in the department.

(15) "Metric system" means the "Système Internationale System of Weights and Measures", as adopted by the United States department of commerce.

(16) "Metrology services" means all testing and calibrating and, when necessary, the making of adjustments to weights and measures.

(17) "Moisture content" means the percentage content of moisture and other volatiles on a wet basis in a grain sample as determined in a manner recognized by the United States department of agriculture.

(18) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(19) “Moisture-testing device” means all equipment and accessories required for determining the moisture content in a grain sample.

(20) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(20.5) “National type evaluation program” means the evaluation program administered by the national conference on weights and measures.

(21) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(22) “Not susceptible of repair” means any weight or measure that is designed or constructed in such a fashion so as to fail to comply with the applicable design or construction standards for such weight or measure or that cannot be repaired to meet the tolerance standards for such weight or measure.

(23) and (23.5) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(24) “Placing in service” means placing in use any new, used, repaired, or reconditioned weighing and measuring device.

(25) and (26) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(27) “Random-weight package” means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, as when packages of the same consumer commodity have no fixed pattern of weight.

(27.5) “Reference standards” means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived pursuant to section 35-14-104.

(28) and (29) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(30) “Secondary standards” means the physical standards that are traceable to the reference standards through comparisons, using acceptable procedures, and are used in the enforcement of weights and measures laws and rules.

(30.5) “Standard” means a weight or measure used as a reference to establish a measured quantity value.

(31) “Traceable” means the system of determining the value of a standard by comparison with approved standards of the national institute of standards and technology.

(31.5) and (31.6) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(32) “Vehicle” means any device by which any property, produce, commodity, or article is or may be transported.

(33) “Weight” means net weight as used in connection with any commodity or service; except that, where the label states that the product is sold by drained weight, the term “weight” means net drained weight.

(34) “Weights” or “measures” means all weights or measures of every kind, any instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all of such instruments and devices.

Source: L. 83: Entire article R&RE, p. 1339, § 1, effective July 1. L. 95: (16), (22), and (31) amended and (1.7), (20.5), (23.5), (31.5), and (31.6) added, p. 893, § 1, effective July 1. L. 2009: (1), (1.7), (4), (7), (11), (14), (16), (17), (18), (20), (20.5), (21), (22), (23), (23.5), (24), (25), (26), (28), (29), (30), (31.5), (31.6), and (33) amended and (4.5), (5.5), (27.5), and (30.5) added, (SB 09-113), ch. 88, p. 323, § 6, effective April 2. L. 2011: (9.5) added, (HB 11-1159), ch. 95, p. 279, § 1, effective August 10.

Editor’s note: (1) This section is similar to former §§ 35-14-101 and 35-14-102 as they existed prior to 1983.

(2) Subsection (3) is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-103. Systems of weights and measures - customary or metric. The inch pound system and the metric system of weights and measures are jointly valid, and either one or

both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the national institute of standards and technology, are recognized and shall govern weighing and measuring equipment and transactions in this state.

Source: **L. 83:** Entire article R&RE, p. 1342, § 1, effective July 1. **L. 95:** Entire section amended, p. 894, § 2, effective July 1.

35-14-104. Physical standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state's reference standards of weights and measures and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the commissioner. The commissioner shall have the custody and keep accurate records of the state standards of weights and measures and of the other standards and equipment provided for by this article.

Source: **L. 83:** Entire article R&RE, p. 1342, § 1, effective July 1. **L. 95:** Entire section amended, p. 894, § 3, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 326, § 7, effective April 2.

Editor's note: This section is similar to former §§ 35-14-103 and 35-14-104 as they existed prior to 1983.

35-14-105. Technical requirements for weighing and measuring devices - certificate required - exception. (1) The specifications, tolerances, and other technical requirements, including user requirements, for commercial, law enforcement, data gathering, and other weighing and measuring devices adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements or revisions to that handbook, apply to weighing and measuring devices in this state, except as modified or rejected or as otherwise specified by this article or any rule promulgated pursuant to this article. Except as provided in subsection (2) of this section, any weight or measure or any weighing or measuring instrument or device shall be issued a certificate of conformance from the national type evaluation program prior to use for commercial or law enforcement purposes.

(2) A certificate of conformance is not required for a grain protein analyzer.

Source: **L. 83:** Entire article R&RE, p. 1342, § 1, effective July 1. **L. 95:** Entire section amended, p. 894, § 4, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 326, § 8, effective April 2. **L. 2011:** Entire section amended, (HB 11-1159), ch. 95, p. 279, § 2, effective August 10.

Editor's note: This section is similar to former § 35-14-104 as it existed prior to 1983.

35-14-106. Administration. The commissioner shall administer and enforce the provisions of this article and shall have and may exercise any and all of the administrative powers conferred upon the head of a department of the state. The commissioner is authorized to employ, pursuant to section 13 of article XII of the state constitution, such deputies and inspectors as he may deem necessary for the proper enforcement of this article, subject to the constitution and laws of the state. The powers and duties given to and imposed upon the commissioner are also given to and imposed upon the deputies and inspectors when acting under the instructions and at the direction of the commissioner.

Source: L. 83: Entire article R&RE, p. 1342, § 1, effective July 1.

Editor's note: This section is similar to former § 35-14-105 as it existed prior to 1983.

35-14-107. Powers and duties of commissioner - rules. (1) The commissioner shall:

(a) Maintain traceability of this state's standards to the standards of the national institute of standards and technology;

(b) Implement and carry out the provisions of this article;

(c) Establish requirements for labeling, requirements for the presentation of cost-per-unit information, standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity;

(d) Grant any exemptions from this article or any rules promulgated pursuant to this article if in the commissioner's opinion such exemption would serve the public interest;

(e) Conduct investigations to ensure compliance with this article;

(f) Delegate to appropriate personnel any responsibilities for the proper administration of this article;

(g) Test annually the standards of weights and measures used by any city or county within the state and approve the same when found to be correct; except that tuning forks used to determine the accuracy of radar guns shall not be subject to annual testing;

(h) Inspect and test weights and measures kept, offered, or exposed for sale, including prepackaged commodities;

(i) Inspect and test, to ascertain if they are correct, all commercial weighing and measuring devices for which the owner is required to be licensed under this article;

(j) Test all weights and measures used in checking the receipt or disbursement of supplies in every state institution if funds are appropriated for such maintenance;

(k) Approve for use, and may mark, such weights and measures as he or she finds to be correct and may reject and mark as rejected such weights and measures as he or she finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in an unauthorized manner. The commissioner may condemn and seize weights and measures found to be incorrect and that are not capable of being made correct.

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules promulgated pursuant to this article. Accuracy of weight, measure, or count shall be determined by procedures set forth in the national institute of standards and technology handbook 133 as adopted by the national conference on weights and measures 1980, and any supplements or revisions thereto unless otherwise specified by the commissioner by rule. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

(m) Prescribe the appropriate term or unit or weight or measure to be used whenever he determines, in the case of a specific commodity, that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparison or is represented in any manner that tends to mislead or deceive any person;

(n) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice, only after the commodity has entered intrastate commerce;

(o) Promulgate such rules as are necessary for the implementation and administration of this article in accordance with article 4 of title 24, C.R.S., including rules regarding the use of weights and measures, methods of sale, unit pricing, declaration of quantity, retail sales price representations for commodities and services, including requirements for cents-off and introductory offer promotions, and labeling requirements;

(p) Negotiate and enter into contracts with local governments for the implementation and enforcement of this article.

(2) The commissioner may, upon request, inspect and test any weight, measure, or standard used by a governmental entity.

Source: L. 83: Entire article R&RE, p. 1343, § 1, effective July 1. L. 95: (1)(a) and (1)(l) amended, p. 894, § 5, effective July 1. L. 2009: (1)(a), (1)(d), (1)(g), (1)(i), (1)(k), (1)(l), and (1)(o) amended and (2) added, (SB 09-113), ch. 88, pp. 326, 323, §§ 9, 4, effective April 2.

Editor's note: This section is similar to former §§ 35-14-107 and 35-14-108 as they existed prior to 1983.

35-14-108. Special police powers. (1) When necessary to perform his duties or to implement the provisions of this article or the rules and regulations promulgated pursuant thereto, the commissioner or his authorized agent may:

(a) Enter any commercial premises during normal business hours; except that, in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(b) Issue stop-use, hold, or removal orders with respect to any weights and measures commercially used and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale which do not meet the requirements of this article;

(c) Seize, for use as evidence and without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this article or any rule or regulation promulgated pursuant thereto;

(d) Stop any commercial vehicle and, after presentment of his credentials, require that the person in charge of the vehicle produce any documents in his possession concerning the contents of said vehicle, inspect the contents of such vehicle at the site, and, if necessary, require such person to proceed with the vehicle to some specified place for inspection.

(2) The commissioner may administer oaths and take statements, issue subpoenas requiring the attendance of witnesses before him or her and the production of all books, memoranda, papers, and other documents, articles, or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(3) If the owner, or the owner's agent, of any commercial premises or vehicle refuses to admit the commissioner to inspect such premises or vehicle, the commissioner may obtain from the district or county court for the district or county in which such premises or vehicle is located a warrant to enter and inspect such premises or vehicle.

Source: L. 83: Entire article R&RE, p. 1344, § 1, effective July 1. L. 2009: (2) and (3) added, (SB 09-113), ch. 88, p. 328, § 10, effective April 2.

Editor's note: This section is similar to former § 35-14-112 as it existed prior to 1983.

35-14-109. Contract services. (Repealed)

Source: L. 83: Entire article R&RE, p. 1345, § 1, effective July 1. L. 87: (2) repealed, p. 492, § 43, effective July 1. L. 2009: Entire section repealed, (SB 09-113), ch. 88, p. 328, § 11, effective April 2.

Editor's note: This section was similar to former §§ 35-14-114 and 35-14-115 as they existed prior to 1983.

ANNOTATION

Both state and municipal governments may regulate as long as no conflict. The regulation of weights and measures to prevent misrepresentations and frauds in commercial transactions between vendor and vendee is a matter of both statewide and local concern and may be

regulated under the police power at the state level and concurrently at the municipal level, providing there are no conflicting regulatory provisions. *Blackman v. County Court*, 169 Colo. 345, 455 P.2d 885 (1969).

35-14-110. Misrepresentation of quantity. No person shall sell, offer, advertise, or expose for sale less than the quantity of commodity or service he represents nor take any more than the quantity of commodity or service he represents.

Source: L. 83: Entire article R&RE, p. 1345, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-14-119 and 35-14-120 as they existed prior to 1983.

35-14-111. Misrepresentation of price. No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

Source: L. 83: Entire article R&RE, p. 1345, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-14-119 and 35-14-120 as they existed prior to 1983.

35-14-112. Method of sale - general. Except as otherwise provided by the commissioner by rule, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides accurate quantity and pricing information.

Source: L. 83: Entire article R&RE, p. 1345, § 1, effective July 1. **L. 93:** Entire section amended, p. 272, § 4, effective July 1. **L. 2006:** Entire section amended, p. 1507, § 55, effective June 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 328, § 12, effective April 2.

Editor's note: This section is similar to former § 35-14-118 as it existed prior to 1983.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 79, Session Laws of Colorado 1993.

35-14-113. Method of sale - special food products. (Repealed)

Source: L. 83: Entire article R&RE, p. 1345, § 1, effective July 1. **L. 2009:** Entire section repealed, (SB 09-113), ch. 88, p. 328, § 13, effective April 2.

Editor's note: This section was similar to former § 35-14-118 as it existed prior to 1983.

35-14-114. Method of sale - special nonfood products. (Repealed)

Source: L. 83: Entire article R&RE, p. 1346, § 1, effective July 1. **L. 93:** Entire section amended, p. 272, § 5, effective July 1. **L. 95:** (2)(a) amended, p. 896, § 6, effective July 1. **L. 2009:** Entire section repealed, (SB 09-113), ch. 88, p. 330, § 14, effective April 2.

Editor's note: This section was similar to former § 35-14-118 as it existed prior to 1983.

35-14-115. Machine vended commodities. (1) Each vending machine which dispenses commodities in package form shall indicate:

- (a) Proper identity;
 - (b) Net quantity; and
 - (c) Name, address, and telephone number of the vendor or of the responsible party.
- (2) The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

Source: L. 83: Entire article R&RE, p. 1346, § 1, effective July 1.

35-14-116. Railroad car tare weights. (1) Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:

(a) All newly stenciled or restenciled tare weights shall be accurately represented to the nearest one hundred pounds for inch pound units and to the nearest fifty kilograms for metric units, and the representation shall include the date of weighing.

(b) The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be:

(I) If in inch pounds:

(A) Plus or minus three hundred pounds for cars of fifty thousand pounds or less;

(B) Plus or minus four hundred pounds for cars over fifty thousand pounds but not over sixty thousand pounds; or

(C) Plus or minus five hundred pounds for cars over sixty thousand pounds;

(II) If in metric:

(A) Plus or minus one hundred fifty kilograms for cars twenty-five thousand kilograms or less;

(B) Plus or minus two hundred kilograms for cars over twenty-five thousand kilograms but not over thirty thousand kilograms; or

(C) Plus or minus two hundred fifty kilograms for cars over thirty thousand kilograms.

(c) Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.

(d) Tank cars, covered hopper cars, flat cars equipped with multideck racks or special superstructures, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and restenciled only by owners or their authorized representatives if the car bears no lightweight (empty weight) stenciling or if repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.

Source: L. 83: Entire article R&RE, p. 1346, § 1, effective July 1.

35-14-117. Unit pricing - application - inch pound or metric. (1) Except for random-weight packages unit priced in accordance with rules promulgated pursuant to this article, any retail establishment providing unit price information in addition to the total price for any commodity shall also provide the unit price information for all such commodities as required by rules promulgated pursuant to this article.

(2) Either metric or inch pound unit prices may be used for commodities marked in either system; except that, when unit price is changed to metric for any given type of commodity, unit pricing for all sources or suppliers of that commodity should change to metric.

Source: L. 83: Entire article R&RE, p. 1347, § 1, effective July 1. **L. 2009:** (1) amended, (SB 09-113), ch. 88, p. 330, § 15, effective April 2.

35-14-118. Declarations on packages. (1) Except as otherwise provided in this article, any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (a) The net quantity of the contents in terms of weight, measure, or count; and
 - (b) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor;
 - (c) The identity of the commodity in the manner specified by rule promulgated pursuant to this article.
- (2) Under paragraph (a) of subsection (1) of this section, the commissioner, by regulation, shall establish reasonable variations or tolerances to be allowed and also exemptions as to small packages.

Source: L. 83: Entire article R&RE, p. 1347, § 1, effective July 1. L. 2009: (1)(c) added, (SB 09-113), ch. 88, p. 330, § 16, effective April 2.

Editor's note: This section is similar to former § 35-14-119 as it existed prior to 1983.

35-14-119. Misleading packages - allowances. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the commissioner.

Source: L. 83: Entire article R&RE, p. 1348, § 1, effective July 1.

Editor's note: This section is similar to former § 35-14-119 as it existed prior to 1983.

35-14-120. Declaration of unit price on random-weight packages. In addition to the declarations required by section 35-14-118, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

Source: L. 83: Entire article R&RE, p. 1348, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-14-119 and 35-14-120 as they existed prior to 1983.

35-14-121. Weigher - qualification - certification - revocation. (1) A person who has sufficiently good moral character to carry on the business stated in the application, subject to section 24-5-101, C.R.S., who has the ability to weigh accurately, make correct weight certificates, and who has received from the commissioner a certificate of certified weigher may use the title of and shall be authorized to act as a certified weigher.

(2) An application for a certificate of certified weigher shall be made upon a form provided by the commissioner. The application shall include evidence that the applicant has the qualifications required by subsection (1) of this section.

(3) The commissioner may adopt rules for determining the qualifications of the applicant for a license as a certified weigher. For the purpose of determining qualifications of the applicant, the commissioner may approve the qualifications of the applicant upon the basis of the information supplied in the application or he may examine such applicant orally or in writing or both. He shall grant certificates of certified weigher to such applicants as may be found to possess the qualifications required by subsection (1) of this section. The commissioner shall keep a record of all such applicants and of all certificates issued.

(4) The commissioner may, upon request and without charge, issue a limited certification as a certified weigher to any qualified officer or employee of a municipality or county of this state or of a state commission, board, institution, or agency authorizing such officer or employee to act as a certified weigher only within the scope of his official employment.

(5) All certificates of certified weighers in existence as of June 30, 2009, shall expire five years after issuance. All certificates issued on or after July 1, 2009, shall expire on the

date specified by the commissioner by rule. A certified weigher who fails to renew a certificate on or before the expiration date of the certificate shall pay a late fee, as established by the commission, in addition to the certificate fee. Renewal applications shall be in such form as the commissioner shall prescribe.

(6) The following persons shall be permitted, but shall not be required, to obtain certification as certified weigher:

(a) A weights and measures officer when acting within the scope of his official duties;

(b) A person weighing property, produce, commodities, or articles that he or his employer, if any, is buying or selling; and

(c) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal law or the laws of this state relative to warehousemen or processors.

(7) The commissioner, in accordance with section 24-4-104, C.R.S., may suspend, deny, revoke, restrict, place on probation, or refuse to renew the certificate of any certified weigher or applicant for such certificate if such certified weigher or applicant has been convicted in any court of competent jurisdiction of violating any provision of this article or if the commissioner is satisfied that the person has violated any provision of this article.

Source: L. 83: Entire article R&RE, p. 1348, § 1, effective July 1. L. 95: (1) and (7) amended, p. 896, § 7, effective July 1. L. 2009: (5) amended, (SB 09-113), ch. 88, p. 330, § 17, effective April 2.

Editor's note: This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-122. Public scales - requirements - weight certificates - procedures - records.

(1) (a) Provision shall be made for official certified scales throughout the state for the purpose of doing public weighing if the scale owners agree to meet the requirements of this article. Such scales shall be operated only by a certified weigher. All equipment used by certified weighers shall be approved by the commissioner.

(b) The commissioner shall require the owner or operator of all certified scales to post on the outside of the scale house, where it can be conveniently observed by all persons, a sign at least twelve inches high and thirty-six inches long, stating the maximum weighing capacity of the scale. No person shall weigh or attempt to weigh any article or load having a greater weight or suspected weight greater than the rated capacity of the scale.

(2) (a) It shall be the duty of each certified weigher to weigh upon the certified scales any load delivered at the scales for weighing when engaged to do so by any person and to issue a certificate of correct weight. The certificate of correct weight shall state the gross weight of the load, the tare weight, the net weight of the load, and the date of weighing. In addition, the weight certificate shall indicate the state license number of the vehicle, or other positive identification, a serial number, the name of the shipper or the owner of the load, the nature of the load, the name of the receiver of the load, whether the driver is off or on the scale, the name of the certified weigher, and the location of the certified scale. For issuing a certificate, the certified weigher may charge a reasonable fee; except that no charge may be made for weighing done or for certificates issued upon the demand of the commissioner or any employee acting in an official capacity under the provisions of this article.

(b) All certified weighers shall keep a daily register in which they shall enter every transaction by them as certified weighers, including the gross weight of each load, the weight of the vehicle, the net weight of the load, the license number of the vehicle, if any, the name of the dealer or owner, the name of the weigher, the name of the person for whom the weighing was done, and the date of weighing. The daily register shall be kept by the certified weigher and shall be open at all times to inspection by the supervisor of measurements standards and all other inspectors of the department and by any other person interested therein. Such daily registers shall be kept for a period of two years.

(3) A weighing made of any vehicle or combination of vehicles to ascertain the gross, tare, or net weight for commercial purposes or certification by a certified weigher shall not be determined by any procedure denominated as a split-weighing or fore-and-aft draft. The gross, tare, or net weight of any vehicle or combination of vehicles as a single unit shall be

determined upon scales with platforms of sufficient size to accommodate the vehicle or combination of vehicles as one entire unit; except that the gross, tare, or net weight of a combination of vehicles may be determined upon a scale which will not accommodate the combination of vehicles as one entire unit if the same are separated and the weight of each member thereof can and is determined separately as an independent unit. In such cases, weight certificates shall be issued for each such separate weighing.

(4) The certified scales shall be available for use by the public each day of the year during all reasonable business hours. Sundays and other legal holidays are excepted.

(5) All persons, firms, and corporations which do public weighing for a fee shall keep a complete record of each such weighing for a period of two years, and at least one copy of each weighing certificate shall be retained on record at the place of weighing.

(6) (a) All commodities bought, sold, delivered, or in the process of changing ownership that use the weight of the content for final determination and settlement shall be weighed on a scale licensed in accordance with this article if neither the buyer nor the seller owns his or her own scale. The weigher shall issue a weight certificate containing all the information required by subsection (2) of this section to both the buyer and the seller. If the buyer or seller owns his or her own scale licensed by the department and uses such scale to determine the weight of such commodities, such party shall issue a ticket or invoice in duplicate to the other party. Said ticket or invoice shall contain all the information required by subsection (2) of this section.

(b) All commodities bought, sold, delivered, or in the process of changing ownership for which a weight certificate, ticket, or invoice has been issued pursuant to paragraph (a) of this subsection (6) and which are being hauled or transported on the streets, roads, or highways of this state shall be accompanied with a weight certificate or a ticket or invoice containing the information required by subsection (2) of this section.

Source: L. 83: Entire article R&RE, p. 1349, § 1, effective July 1. **L. 2009:** (6)(a) amended, (SB 09-113), ch. 88, p. 336, § 24, effective April 2.

Editor's note: This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-123. Weighing and measuring device service providers - certification - fees - placing in service - rules. (1) No person, other than the owner, may repair, service, or place in service any commercial weighing or measuring device for which the owner must obtain a license to operate unless the person is certified by the commissioner as a commercial weighing and measuring device service provider. The commissioner may specify the requirements for certification of service providers by rule. For the purposes of this section, only one certificate is required for each business employing service persons. The application for a commercial weighing and measuring device service provider certificate shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee established by the commission. All certificates shall expire on the date specified by the commissioner by rule. A provider who fails to renew a certificate on or before the expiration date of the certificate shall pay a late fee, as established by the commission, in addition to the certificate fee.

(2) The commissioner shall adopt rules specifying:

(a) The categories and requirements for certification of commercial weighing and measuring device service providers; and

(b) The performance requirements for commercial weighing and measuring devices service providers.

(c) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(3) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(4) Each commercial weighing or measuring device not exempted pursuant to section 35-14-126 that is placed in service by a commercial weighing and measuring device service provider shall comply with section 35-14-105. When repairing, servicing, or placing in service any such device, a commercial weighing and measuring device service provider

shall comply with the most current version of the national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices".

(5) (a) No commercial weighing and measuring device service provider may use a standard when repairing, servicing, or placing in service a commercial weighing or measuring device that is not exempted pursuant to section 35-14-126 unless the commissioner has approved the standard.

(b) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(6) Each commercial weighing and measuring device service provider shall at least annually submit all standards used to repair, service, or place in service any commercial weighing or measuring device not exempted pursuant to section 35-14-126 to the laboratory for approval pursuant to section 35-14-128; except that, if such standards are annually approved in another state by that state's national institute of standards and technology-recognized metrology laboratory and evidence is shown of current approval, traceable to standards of the national institute of standards and technology, which is less than a year after date of issuance, the commissioner may exempt the service provider from obtaining a Colorado approval for the current year.

(7) Upon placing in service any commercial weighing or measuring device not exempted pursuant to section 35-14-126, the service provider shall submit a placing-in-service report to the commissioner within ten days after the placing-in-service date. The commissioner shall promulgate rules to specify the information to be included in placing-in-service reports.

(8) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(9) (Deleted by amendment, L. 95, p. 896, 8, effective July 1, 1995.)

(10) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(11) Nothing in this section shall be construed to prohibit a person from performing repairs or service on a weighing or measuring device that the commissioner has condemned or placed under work order, but such person may not remove any tag placed on any weighing or measuring device pursuant to this article.

Source: **L. 83:** Entire article R&RE, p. 1350, § 1, effective July 1. **L. 87:** (1) amended, p. 490, § 39, effective July 1. **L. 95:** (1), IP(2), (3), (5), (6), (7), (9), and (10) amended, p. 896, § 8, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 331, § 18, effective April 2.

Editor's note: This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-124. Inaccurate devices - stickers - tags - wire seals - rules. (1) A blue tag indicating "Work Order" shall be placed on any commercial weighing or measuring device that in the judgment of the commissioner is out of tolerance or in need of minor repairs. Repairs shall be made within thirty days, and, if not so made, the device shall be removed from commercial use. If the repairs cannot be completed or the device cannot be placed into service due to delay in obtaining parts or other justified circumstances, the commissioner may extend the time limit for repair or placing in service for a reasonable time.

(2) A red tag indicating "CONDEMNED" shall be placed on any commercial weighing or measuring device that is to be removed from use. A wire seal may be so placed as to make the device unusable in any form. A device that has been condemned pursuant to this subsection (2) shall not be used for any commercial purpose.

(3) (a) A tag indicating "no license fee paid" shall be placed on any commercial weighing or measuring device that the owner is not licensed to operate. A wire seal may be so placed as to make the device unusable in any form. A device on which a "no license fee paid" tag has been placed shall not be used for any commercial purpose. A "no license fee paid" tag need not be placed on devices that are being held for resale and are not being used.

(b) When a weighing or measuring device is found in a commercial establishment, it shall be prima facie evidence that said device is being used or employed. If the owner of any such device does not have a license for its use, the device shall have a "no license fee paid" or "not approved for commercial use" tag attached.

(4) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 333, § 19, effective April 2, 2009.)

(5) The commissioner shall promulgate rules to clarify the circumstances under which a blue or red tag should be issued.

Source: L. 83: Entire article R&RE, p. 1352, § 1, effective July 1. L. 2009: Entire section amended and (5) added, (SB 09-113), ch. 88, pp. 333, 323, §§ 19, 5, effective April 2.

Editor's note: (1) This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

(2) Amendments to this section by sections 5 and 19 of Senate Bill 09-113 were harmonized.

35-14-124.5. Disciplinary powers. (1) The commissioner may deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if such person has:

(a) Violated any provision of this article or of any rule adopted by the commissioner under this article;

(b) Been convicted of a felony under any state or federal law; except that, in considering a conviction of a felony, the commissioner shall be governed by section 24-5-101, C.R.S.;

(c) Committed fraud or deception in the procurement or attempted procurement of a license or certificate;

(d) Failed to comply with a lawful order of the commissioner concerning the administration of this article;

(e) Been convicted of deceptive trade practices under any state or federal law;

(f) Used a commercial weighing or measuring device or moisture-testing device in deceptive trade practices in violation of any state or federal law.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or certificate or the placing of a licensee or certificate holder on probation shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Any previous violation of this article by an applicant or associate of the applicant shall be sufficient grounds for denial of a license. For purposes of this subsection (3), "associate" means:

(a) A person associated with the applicant in the business for which such applicant seeks to be licensed or certified;

(b) A partner, officer, director, or stockholder of more than thirty percent of the outstanding shares of a partnership or corporation, when such partnership or corporation is the applicant.

Source: L. 95: Entire section added, p. 899, § 9, effective July 1. L. 2009: (1)(f) amended, (SB 09-113), ch. 88, p. 334, § 20, effective April 2.

Editor's note: This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-125. Household scales. (Repealed)

Source: L. 83: Entire article R&RE, p. 1352, § 1, effective July 1. L. 2009: Entire section repealed, (SB 09-113), ch. 88, p. 334, § 21, effective April 2.

35-14-126. Commercial weighing device exemption - licensing - testing. (1) No license shall be required for the use of the following commercial weighing or measuring devices and such devices shall be exempt from testing:

- (a) Person weighers also referred to as pennyweight scales;
- (b) Any scale used as an in-plant scale to determine ingredients or other such services where the end product or service is determined by some means other than the in-plant scale;
- (c) Those scales operated by the United States postal service;
- (d) Postal scales used exclusively for determining postage fees and where final determination of weight is made by the United States postal service;
- (e) A pharmacist's prescription scale having less than a four-ounce capacity;
- (f) Any other device exempted by the commissioner by rule.

Source: L. 83: Entire article R&RE, p. 1353, § 1, effective July 1. L. 2009: IP(1) amended and (1)(f) added, (SB 09-113), ch. 88, p. 334, § 22, effective April 2.

35-14-127. Licenses - fees - rules - stickers - certificates. (1) Before operating any scale, textile meter, or cordage meter for commercial purposes, except those exempted in section 35-14-126, the owner shall first procure from the department a license for the operation of the device. All such licenses shall expire on the date established by the commissioner by rule.

(2) Any person desiring to obtain a license for the operation of a scale, textile meter, or cordage meter shall file an application with the department upon a form furnished by the commissioner, which shall contain such information as the commissioner may require. Every application for a license shall be accompanied by the proper fee. A person who fails to renew a license on or before the expiration date of the license shall pay a late fee, as established by the commission, in addition to the license fee.

(3) The commissioner shall test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which the owner has been issued a license to operate at least once every twelve months or more often if necessary. Upon testing and approving a device for use, the commissioner shall affix an approval sticker to the device and may issue a device identification number. If the design, construction, or location of any scale, textile meter, or cordage meter is such as to require a testing procedure involving special equipment or accessories or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the licensed owner of the scale, textile meter, or cordage meter as required by the commissioner. Nothing in this section shall prevent an inspector from testing a scale, textile meter, or cordage meter before the issuance of a license if the license fee is paid or is in the process of being paid.

(4) (a) (I) The commission shall establish annual license fees for the operation of commercial weighing and measuring devices based on the number, capacity, and types of devices.

(II) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(a.5) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(b) The capacity of a given scale shall be determined by the manufacturer's rated capacity.

(c) The annual license fee for belt conveyor and in-motion railroad scales shall be as determined by the commission.

(5) The commission shall determine the annual license fee for textile meters, cordage meters, moisture meters, grain protein analyzers, certified weighers, persons who sell or install weighing and measuring devices, and persons who service weighing and measuring devices.

(6) to (10) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(11) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 334, § 23, effective April 2, 2009.)

(12) The fees for inspection and testing pursuant to section 35-14-107 (2) shall be as determined by the commission.

(12.5) (a) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the commission shall establish fees associated with the licensing, testing, inspection, and regulation of scales with a capacity of one thousand pounds or less, cordage meters, and textile meters. Such fees shall cover the direct and indirect costs of adminis-

tering and enforcing this article other than subsection (12) of this section, paragraph (b) of this subsection (12.5), and section 35-14-128 (2).

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), for each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs associated with the licensing, testing, inspection, and regulation of certified weighers, scales with a capacity of greater than one thousand pounds, belt conveyers, in-motion railroad scales, moisture-testing devices, and grain protein analyzers must be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(13) All license fees and testing fees collected by the department under this article shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 83: Entire article R&RE, p. 1353, § 1, effective July 1. L. 2003: (2), (4)(a), (4)(c), (5), (6), (7), (8), (9), (10), (12), and (13) amended and (4)(a.5) added, p. 1728, § 11, effective May 14. L. 2005: IP(4)(a)(I), IP(4)(a.5), (4)(c), (5), (6), (7), (8), (9), (10), (12), and (13) amended, p. 1270, § 10, effective July 1. L. 2006: (4)(a)(II) amended, p. 1516, § 85, effective July 1. L. 2007: IP(4)(a)(I), (4)(a)(II), (4)(a.5), (4)(c), (5) to (10), (12), and (13) amended and (12.5) added, p. 1905, § 8, effective July 1. L. 2009: (1), (2), (3), (4)(a)(I), (4)(c), (5), (11), (12), and (12.5) amended, (SB 09-113), ch. 88, p. 334, § 23, effective April 2. L. 2010: (12.5)(b) amended, (HB 10-1377), ch. 212, p. 922, § 3, effective May 6. L. 2011: (5), (12.5)(b)(I), and (12.5)(b)(II)(A) amended, (HB 11-1159), ch. 95, p. 280, § 3, effective August 10.

Editor's note: (1) This section is similar to former § 35-14-123 as it existed prior to 1983.

(2) This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

(3) Subsection (12.5)(b)(II)(B) provided for the repeal of subsection (12.5)(b)(II), effective July 1, 2012. (See L. 2010, p. 280.)

35-14-128. Laboratory approval - service - condemnation. (1) The commissioner may inspect and test any weights, measures, or standards submitted to the metrology laboratory. Weights, measures, and standards may not be approved by the department's laboratory unless the design and construction of the unit complies with the design and construction requirements prescribed by the national institute of standards and technology or other entity approved by the commissioner. The commissioner may establish approval periods, conditions, and limitations by rule.

(2) (a) The laboratory may require that specified weights, measures, or standards submitted for calibration be cleaned or sanded, scraped, and painted before submission. The fee for any metrology service shall be established by the commission. Except as provided in paragraph (b) of this subsection (2), for each fiscal year, commencing on July 1, seventy-five percent of the direct and indirect costs associated with metrology laboratory services, including the regulation of weighing and measuring device sales, installation, and service persons, shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(b) Repealed.

(3) The laboratory may seize any weight, measure, or standard that it deems not to be susceptible of repair. Within twenty-four hours after such seizure, the laboratory shall cause notice of such seizure to be served personally or by first-class mail upon the owner of such weight, measure, or standard, advising such owner of the seizure and of the laboratory's intention to destroy such weights, measures, or standards, pursuant to section 35-14-107 (1) (k). Such notice shall also state that the owner of such weights, measures, or standards may, within twenty days after the date of personal service or mailing, request in writing that the commissioner conduct a hearing to determine whether such weights, measures, or standards are not susceptible of repair. If a hearing is requested, it shall be conducted promptly, and the commissioner or the commissioner's designated agent shall preside over such hearing,

and the laboratory shall take no further action pending such hearing. If a hearing is not requested, the seized weights, measures, or standards may be destroyed after the expiration of the twenty-day period.

Source: **L. 83:** Entire article R&RE, p. 1354, § 1, effective July 1. **L. 95:** (1) amended, p. 899, § 10, effective July 1. **L. 2003:** (2) amended, p. 1731, § 12, effective May 14. **L. 2005:** (2) amended, p. 1271, § 11, effective July 1. **L. 2007:** (2) amended, p. 1907, § 9, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 336, § 25, effective April 2. **L. 2010:** (2) amended, (HB 10-1377), ch. 212, p. 922, § 4, effective May 6.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2012. (See L. 2010, p. 280.)

35-14-129. Moisture-testing devices and grain protein analyzers - specifications.

(1) Before operating any moisture-testing device or grain protein analyzer for commercial use, the owner of the device or analyzer shall first procure a license for operation of the device or analyzer from the commissioner. An application for the license must be made upon a form furnished by the commissioner. A moisture-testing device or a grain protein analyzer is considered in commercial use if the results of the device or analyzer are a factor in determining:

- (a) The price of the commodity tested; or
 - (b) For a moisture-testing device, the drying or other processing charge based upon moisture content of the commodity.
- (2) to (6) Repealed.

Source: **L. 83:** Entire article R&RE, p. 1355, § 1, effective July 1. **L. 95:** (2) to (6) repealed, p. 899, § 11, effective July 1. **L. 2009:** IP(1) amended, (SB 09-113), ch. 88, p. 337, § 26, effective April 2. **L. 2011:** (1) amended, (HB 11-1159), ch. 95, p. 280, § 4, effective August 10.

Editor's note: This section is repealed, effective July 1, 2018, pursuant to § 35-14-134.

35-14-130. Stop sale order. (1) The commissioner may issue warning notices to anyone who has not complied with this article and may establish a time period to correct any minor violation.

(2) The commissioner may issue a stop sale order directing that any products not meeting the requirements of this article or the rules promulgated by the commissioner be taken off sale.

Source: **L. 83:** Entire article R&RE, p. 1356, § 1, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 337, § 27, effective April 2.

35-14-131. Civil penalties. (1) A person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed seven hundred fifty dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule for the second time. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if a person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in a court of competent jurisdiction.

(4) Before imposing a civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the business.

(5) It is a violation for any person to:

(a) Sell, offer, or expose for sale or hire or have in his or her possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure;

(b) Use, or possess for current use or for hire, in the buying or selling of any commodity or thing, in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure that is not approved by the commissioner or the commissioner's designated agent, unless specific written permission to use such weight or measure has been received from the commissioner;

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or rule;

(d) Remove, break, or deface, contrary to law or rule, any tag, seal, or mark placed on any weight or measure pursuant to this article, except in the case of the commissioner or a service person, certified pursuant to section 35-14-123, performing duties provided for in this article or any rule adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the quantity such person represents of any commodity, thing, or service;

(f) Take more than the quantity such person represents of any commodity, thing, or service when, as a buyer, such person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to the requirements of this article;

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and medical prescriptions, a weight or measure that is so positioned that its indications may not be accurately read and the weighing or measuring operation observed from some position that may reasonably be assumed by a customer; except that this paragraph (h) shall not apply to livestock scales used in any licensed yard selling livestock;

(i) Violate any provision of this article or any rule promulgated under this article for which a specific penalty has not been prescribed;

(j) Act as or represent oneself to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify, represent, or record the weight of any load, or part of any load, or of any article whatsoever obtained from a commercial weighing and measuring device not exempted pursuant to section 35-14-126; falsely certify, represent, or record any net or gross weight required by this article to be in said certificate or record; refuse to weigh any article or thing that it is such person's duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(k) Alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighed, alter or diminish the quantity thereof;

(l) Hinder or obstruct in any way the commissioner or the commissioner's authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent oneself to be a certified weighing or measuring device service provider without being so certified.

(6) A civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit it to the inspection and consumer services cash fund created in section 35-1-106.5. Penalties shall be determined by the commissioner or the commissioner's designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or the commissioner's designee shall be subject to judicial

review. If such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty if such issue is raised by the party against whom the penalty was assessed.

Source: **L. 83:** Entire article R&RE, p. 1356, § 1, effective July 1. **L. 95:** (1), (2)(b), (2)(d), (2)(e), (2)(f), (2)(j), (2)(l), (2)(m), and (3) amended, p. 899, § 12, effective July 1. **L. 2003:** (3) amended, p. 1731, § 13, effective May 14. **L. 2005:** (3) amended, p. 1271, § 12, effective July 1. **L. 2007:** (3) amended, p. 1907, § 10, effective July 1. **L. 2009:** Entire section amended, (SB 09-113), ch. 88, p. 337, § 28, effective April 2.

Editor's note: (1) This section is similar to former § 35-14-132 as it existed prior to 1983.

(2) Subsections (5)(d), (5)(j), and (5)(m) of this section are repealed, effective July 1, 2018, pursuant to the provisions of § 35-14-134.

35-14-132. Criminal penalties. (1) Any person who willfully makes, installs, sells or offers to sell, or uses or allows to be used on his or her weights or measures any counterfeit seal, or seal of the commissioner without proper authority, commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) The commissioner shall inform the district attorney of the proper district of any criminal violation of this article. It is the duty of each district attorney to whom the commissioner presents satisfactory evidence of any violation of this article to cause appropriate proceedings to be commenced and prosecuted in a court of competent jurisdiction. If the district attorney fails to so act within a reasonable time, the commissioner may notify and be represented by the attorney general.

(3) All criminal fines imposed and collected for violations of the provisions of this article shall be paid into the county treasury for the use of the people of the county in which the offense was committed.

Source: **L. 83:** Entire article R&RE, p. 1357, § 1, effective July 1. **L. 2002:** (1) amended, p. 1548, § 308, effective October 1.

Editor's note: This section is similar to former § 35-14-132 as it existed prior to 1983.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-14-133. Enforcement. (1) The commissioner or the commissioner's designee shall enforce this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule promulgated pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at the person's discretion, a hearing to be held within a reasonable period of time to determine whether such violation has occurred. Such hearing shall be conducted pursuant to article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to him or her indicating that a person has engaged in or is about to engage in an act or practice constituting a violation of this article or any rule or order adopted pursuant to this article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order adopted pursuant to this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 83: Entire article R&RE, p. 1358, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-113), ch. 88, p. 340, § 29, effective April 2.

Editor's note: This section is similar to former § 35-14-134 as it existed prior to 1983.

35-14-134. Repeal of sections - review of functions. Sections 35-14-102 (3), 35-14-121 to 35-14-124.5, 35-14-127, 35-14-129, and 35-14-131 (5) (d), (5) (j), and (5) (m) are repealed, effective July 1, 2018. Prior to such repeal, the licensing and certification functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 932, § 24, effective April 28. L. 90: Entire section amended, p. 333, § 19, effective April 3. L. 91: Entire section amended, p. 689, § 64, effective April 20. L. 95: Entire section amended, p. 901, § 13, effective July 1. L. 99: Entire section amended, p. 628, §35, effective August 4. L. 2004: Entire section amended, p. 349, § 17, effective July 1. L. 2009: Entire section amended, (SB 09-113), ch. 88, p. 322, § 1, effective April 2.

CENTRAL FILING SYSTEM

ARTICLE 15

State Central Filing System Board

35-15-101 to 35-15-110. (Repealed)

Editor's note: (1) This article was added in 1988. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 35-15-110 provided for the repeal of this article, effective July 1, 1996. (See L. 94, p. 1555.)

POULTRY AND RABBITS

ARTICLE 20

Poultry and Rabbits

35-20-101 to 35-20-110. (Repealed)

Source: L. 89: Entire article repealed, p. 1395, § 5, effective April 12.

Editor's note: This article was numbered as article 8 of chapter 7, C.R.S. 1963. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 21

Eggs

Editor's note: This article was numbered as article 9 of chapter 7, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1965, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1965, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

35-21-101.	Definitions.	35-21-106.	Rules - commissioner to enforce - procedure.
35-21-102.	Importation, classification, and grades.	35-21-107.	Penalty.
35-21-103.	Registration - transportation.	35-21-107.5.	Civil penalties.
35-21-104.	Licenses - application - fees - rules.	35-21-108.	Repeal of sections - review of functions.
35-21-105.	Exemption.		

35-21-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Candling" means examining the interior of an egg by use of transmitted light sufficient to view the interior of the egg.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture.

(4) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 224, § 7, effective July 1, 2009.)

(5) "Consumer" means any person who buys eggs for household consumption and not for resale.

(6) "Dealer" means any person who is engaged in selling eggs.

(7) "Department" means the department of agriculture.

(8) "Edible eggs" means eggs which are free from mold, blood ring, blood spot, bloody whites, filth, stuck yolk, black rot, white rot, mixed rot, or any other inedible quality as defined by the United States department of agriculture.

(9) (Deleted by amendment, L. 95, p. 699, § 15, effective May 23, 1995.)

(10) and (11) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 224, § 7, effective July 1, 2009.)

(12) Repealed.

(13) "Manufacturer" means any person engaged in the business of manufacturing or preparing any product intended for sale for human consumption in which eggs in any form or part are used.

(14) "Person" means a person, partnership, association, or corporation.

(15) "Poultry eggs", "shell eggs", or "eggs" means shell eggs of the domesticated chicken.

(16) "Producer" means any person engaged in producing eggs in this state.

(17) "Restaurant" means any person engaged in the business of catering or furnishing meals to the public.

(18) and (19) Repealed.

(20) Where applicable, the singular includes the plural; the plural, the singular; and the masculine, the feminine.

Source: L. 65: R&RE, p. 213, § 1. C.R.S. 1963: § 7-9-1. L. 73: p. 214, § 1. L. 95: (6), (8), (9), and (12) amended, p. 699, § 15, effective May 23. L. 2009: (1), (4), (6), (10), and (11) amended and (12), (18), and (19) repealed, (SB 09-127), ch. 63, pp. 224, 223, §§ 7, 4, effective July 1.

35-21-102. Importation, classification, and grades. (1) All shell eggs shall be edible eggs, and shall be candled and graded into Colorado consumer grades.

(2) The consumer grades and weight classes for shell eggs, and standards for quality of individual shell eggs, shall be based on the United States department of agriculture grades and weight classes for shell eggs and standards for quality of individual shell eggs. The commission may adopt regulations as applicable and necessary to conform to current United States department of agriculture regulations for shell eggs.

(3) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 225, § 8, effective July 1, 2009.)

(4) A copy of the United States department of agriculture regulations governing the grading of shell eggs and United States standards, grades, and weight classes for shell eggs shall be kept on file in the office of the commissioner and shall be open to public inspection during normal business hours.

Source: L. 65: R&RE, p. 215, § 1. C.R.S. 1963: § 7-9-2. L. 73: p. 214, § 2. L. 2009: (1) and (3) amended, (SB 09-127), ch. 63, p. 225, § 8, effective July 1.

35-21-103. Refrigeration - transportation.

- (1) Repealed.
- (2) All eggs shall be kept under adequate refrigeration. The refrigeration shall be such that the temperature of the eggs does not exceed the temperature established in rules adopted by the commissioner pursuant to section 35-21-106 (1).
- (3) Every vehicle used to transport eggs shall be maintained in a sanitary condition and shall be enclosed to protect eggs from extreme heat or cold.
- (4) to (9) (Deleted by amendment, L. 95, p. 699, § 16, effective May 23, 1995.)

Source: L. 65: R&RE, p. 215, § 1. C.R.S. 1963: § 7-9-3. L. 73: p. 215, § 3. L. 95: Entire section amended, p. 699, § 16, effective May 23. L. 2009: (1) repealed and (2) and (3) amended, (SB 09-127), ch. 63, pp. 225, 226, §§ 11, 9, 12, effective July 1.

35-21-104. Licenses - application - fees - rules. (1) Every person selling poultry eggs within this state shall obtain from the department a dealer's license for each place where such business is conducted. A license is not transferable. The license shall expire and may be renewed in accordance with rules promulgated by the commissioner. No reduction of license fee may be made for a fractional part of a year.

- (2) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)
- (3) An application for a license shall state:
 - (a) The name of the applicant;
 - (b) If the applicant is a firm, the names of its members;
 - (c) If the applicant is a corporation, the names of its officers;
 - (d) The location of the business;
 - (e) The telephone number of the business;
 - (f) Any ownership information concerning the application that the commissioner may require; and
 - (g) Any contact information that the commissioner may require.
- (4) (a) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 223, § 5, effective July 1, 2009.)
- (b) (I) The license categories shall be established by rule by the commissioner based on the average number of cases of eggs (thirty dozen per case) sold per week during the previous twelve months.
 - (II) The commission may establish a late fee for a license renewed after it has expired.
 - (III) Fees for each license category shall be as established by the commission.
 - (IV) The applicant for a license shall keep such records as may be necessary to indicate accurately the quantity of eggs sold per week during the year and shall allow the commissioner to examine these records in determining the quantity of eggs sold. A licensee shall retain such records of quantity sold for a period of two years.
- (c) and (d) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)
- (e) Repealed.
- (f) to (i) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)
- (j) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish a fee schedule to cover all of the direct and indirect costs of administering and enforcing the provisions of this article.
- (5) All license fees shall be deposited with the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 65: R&RE, pp. 200, 217, §§ 16, 1. C.R.S. 1963: § 7-9-4. L. 73: p. 216, § 4. L. 95: Entire section amended, p. 700, § 17, effective May 23. L. 2003: (4)(a), (4)(b), and (5) amended, p. 1731, § 14, effective May 14. L. 2005: (4)(a), (4)(b), and (5) amended, p. 1272, § 13, effective July 1. L. 2007: (4)(a), (4)(b), and (5) amended and

(4)(j) added, p. 1907, § 11, effective July 1. **L. 2009:** (1), (3)(d), (3)(e), (4)(a), and (4)(b) amended, (3)(f) and (3)(g) added, and (4)(e) repealed, (SB 09-127), ch. 63, pp. 223, 226, 225, §§ 5, 13, 10, effective July 1.

Editor's note: (1) This section is repealed, effective July 1, 2020, pursuant to § 35-21-108.

(2) Subsection (4)(j) was originally numbered as (4)(g) in House Bill 07-1198 but has been renumbered on revision for ease of location.

35-21-105. Exemption. (1) Except as provided in subsection (2) of this section, a person who produces and sells, only on the premises at which the eggs were produced, at a farmers' market, or through a community-supported agricultural organization, less than two hundred fifty dozen eggs per month is exempt from this article; except that such a producer may apply for a dealer's license and, upon compliance with this article, be issued a dealer's license.

(2) A person transporting eggs for sale at a farmers' market or similar venue under subsection (1) of this section shall:

(a) Comply with the transport requirements of section 35-21-103 (3) and any rules, including rules requiring refrigeration, promulgated under this article regarding the safe transport and washing of eggs; and

(b) Affix to the egg package a label containing the address at which the eggs originated and the date on which the eggs were packaged. Any eggs not treated for salmonella must also include the following statement on the package: "Safe Handling Instructions: To prevent illness from bacteria, keep eggs refrigerated, cook eggs until yolks are firm, and cook any foods containing eggs thoroughly."

Source: **L. 65:** R&RE, p. 220, § 1. **C.R.S. 1963:** § 7-9-5. **L. 2009:** Entire section amended, (SB 09-127), ch. 63, p. 224, § 6, effective July 1. **L. 2012:** Entire section amended, (SB 12-048), ch. 16, p. 44, § 7, effective March 15.

Cross references: For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 2012.

35-21-106. Rules - commissioner to enforce - procedure. (1) The commissioner is authorized to formulate rules relating to licensing, transporting, processing, labeling, sale, storage, inspection, and record-keeping as the commissioner may deem proper and necessary for the furtherance and enforcement of this article. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(2) (a) The commissioner is responsible for enforcing this article. The commissioner or the commissioner's designee shall have access during regular business hours to business premises, facilities, vehicles, and records pertinent to activities regulated under this article.

(b) If the commissioner determines that the provisions of this article or the rules promulgated for its enforcement are being violated, the commissioner may cause "stop sale notices" to be placed on all eggs being sold or offered for sale in violation of this article or said rules. No person may sell or otherwise dispose of eggs upon which a "stop sale notice" has been issued until such "stop sale notice" has been cancelled by the commissioner or a duly authorized agent.

(3) (a) It is unlawful for any person to refuse to submit any eggs or egg products or to refuse to stop any vehicle transporting eggs or egg products for inspection by any authorized person of the department.

(b) Any authorized agent of the department may, while enforcing the provisions of this article, seize and hold as evidence any carton or container of eggs received, packed, stored, delivered for shipment, loaded, or in transit in violation of any provisions of this article.

Source: **L. 65:** R&RE, p. 220, § 1. **C.R.S. 1963:** § 7-9-6. **L. 95:** (1) and (2) amended, p. 703, § 18, effective May 23. **L. 2009:** (1) and (2)(a) amended, (SB 09-127), ch. 63, p. 226, §§ 14, 15, effective July 1.

Cross references: For rule-making procedures, see article 4 of title 24.

35-21-107. Penalty. (1) Any person who violates any of the provisions of this article is guilty of a misdemeanor. It is the duty of the commissioner to notify the district attorney of the judicial district in which a violation occurs, and the district attorney of said district shall conduct such proceedings as may be necessary with the cooperation of the commissioner. Upon conviction in any court of competent jurisdiction, any person in violation of any of the provisions of this article shall be punished by a fine of not more than five hundred dollars. Each calendar day on which such a violation occurs shall constitute a separate violation. Fines and penalties imposed under this article shall be collected and remitted as provided by law.

(2) After proper hearing as provided in article 4 of title 24, C.R.S., the commissioner may deny an application for licensure, place a licensee on probation, or restrict, suspend, revoke, or refuse to renew the license of a person who violates any of the provisions of this article or any rule adopted under this article. Such restriction, revocation, or suspension of or refusal to renew a license may be in addition to, or in lieu of, any penalties or fines imposed in subsection (1) of this section.

Source: L. 65: R&RE, p. 220, § 1. C.R.S. 1963: § 7-9-7. L. 73: p. 217, § 5. L. 95: (2) amended, p. 704, § 19, effective May 23.

Editor's note: Subsection (2) is repealed, effective July 1, 2020, pursuant to § 35-21-108.

35-21-107.5. Civil penalties. (1) (a) The commissioner may impose a civil penalty on any person who violates any provision of this article or any rule adopted under this article. Such penalty shall not exceed seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) (a) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) Upon a finding that the commissioner did not have probable cause to impose a civil penalty, the person charged may recover from the department such person's costs and attorney fees.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 95: Entire section added, p. 704, § 20, effective May 23. L. 2003: (4) amended, p. 1733, § 15, effective May 14. L. 2005: (4) amended, p. 1274, § 14, effective July 1. L. 2007: (4) amended, p. 1909, § 12, effective July 1.

35-21-108. Repeal of sections - review of functions. Sections 35-21-104 and 35-21-107 (2) are repealed, effective July 1, 2020. Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 933, § 26, effective April 28. L. 90: Entire section amended, p. 333, § 20, effective April 3. L. 91: Entire section amended, p. 690, § 65, effective April 20. L. 95: Entire section amended, p. 704, § 21, effective May 23. L. 2004: Entire section amended, p. 349, § 18, effective July 1. L. 2009: Entire section amended, (SB 09-127), ch. 63, p. 223, § 3, effective July 1.

ARTICLE 22

Branding of Turkeys

35-22-101 to 35-22-113. (Repealed)

Source: L. 77: Entire article repealed, p. 293, § 11, effective May 26.

Editor’s note: This article was numbered as article 10 of chapter 7, C.R.S. 1963, and was not amended prior to its repeal in 1977. For the text of this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

ARTICLE 23

Fruits, Vegetables, and Other
Agricultural Products

Cross references: For the effect of the “Colorado Agricultural Marketing Act of 1939” on this article, see § 35-28-123.

35-23-101.	Legislative declaration.	35-23-109.	Engaging in trade prohibited.
35-23-102.	Responsible officer.	35-23-110.	Malfeasance of inspectors - penalty.
35-23-103.	Federal cooperation.	35-23-111.	Inspection made mandatory.
35-23-104.	Employees of inspection service.	35-23-112.	Appeal of inspection.
35-23-105.	Authority to enter business places.	35-23-113.	Issuance of certificate of inspection.
35-23-106.	Establishment of regulations and grades.	35-23-114.	Inspection fees - agricultural products inspection cash fund.
35-23-107.	Appeal to change regulations and grades.	35-23-115.	Information confidential.
35-23-108.	Power of regulation.	35-23-116.	Penalty.

35-23-101. Legislative declaration. The purpose of this article is to provide the means whereby producers, shippers, carriers, buyers, and sellers of fruits, vegetables, and such other agricultural products as may be mutually agreed upon, on application, may secure prompt and efficient inspection and classification of such products. The standardization of the produce industry by means of the proper classification and grading of fruits, vegetables, and other agricultural products is recognized to be beneficial to the producer, carrier, shipper, buyer, seller, and consumer. Prompt and efficient inspection, under competent authority, furnishes the producer and the shipper prima facie evidence of quality and condition of products; it guarantees the carrier and the receiver as to the quality and condition of products carried and received by them; and it assures the ultimate consumer of the quality and condition of products purchased.

Source: L. 31: p. 368, § 1. CSA: C. 69, § 60. CRS 53: § 7-6-1. C.R.S. 1963: § 7-5-1. L. 71: p. 155, § 1.

ANNOTATION

Object and purpose of this article is to prevent the shipment of the fruits and vegetables herein specified unless the same are in a wholesome and fit condition for human consumption, and also to protect, by inspection, the shipper of fruits and vegetables while the same are in transit. *Cole v. Lindsey*, 120 Colo. 501, 211 P.2d 544 (1949).

35-23-102. Responsible officer. The inspection in this state of fruits, vegetables, and other agricultural products, and the classification of grades thereof, shall be under the direction and control of the commissioner of agriculture.

Source: L. 31: p. 369, § 2. CSA: C. 69, § 61. CRS 53: § 7-6-2. C.R.S. 1963: § 7-5-2. L. 71: p. 155, § 2.

35-23-103. Federal cooperation. The commissioner is empowered to enter into such agreements with the United States department of agriculture as he may determine to be necessary or advisable for the establishment of a joint state and federal inspection service in Colorado for fruits, vegetables, and other agricultural products.

Source: L. 31: p. 369, § 3. CSA: C. 69, § 62. CRS 53: § 7-6-3. C.R.S. 1963: § 7-5-3.

35-23-104. Employees of inspection service. Pursuant to section 13 of article XII of the state constitution, the commissioner shall employ and discharge such supervisors, deputies, inspectors, and employees as the needs of the inspection service require. Inspectors shall be experienced in the inspection of fruits, vegetables, and other agricultural products, and in commercial packing practices, and shall hold, at the time of appointment, a federal inspector's license.

Source: L. 31: p. 369, § 4. CSA: C. 69, § 63. L. 45: p. 342, § 1. CRS 53: § 7-6-4. C.R.S. 1963: § 7-5-4. L. 71: p. 155, § 3.

35-23-105. Authority to enter business places. In carrying out the provisions of this article, the commissioner and his deputies, inspectors, and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, or other building or place where fruits, vegetables, or other agricultural products are kept or stored by any person engaged in the shipping of fruits, vegetables, or other agricultural products, or to stop or inspect at any time any automobile, truck, trailer, or other vehicle transporting or containing any such fruits, vegetables, or other agricultural products.

Source: L. 31: p. 370, § 5. CSA: C. 69, § 64. CRS 53: § 7-6-5. C.R.S. 1963: § 7-5-5. L. 71: p. 156, § 4.

35-23-106. Establishment of regulations and grades. The commissioner is empowered to establish and enforce such grades, grading rules, and regulations in addition to those established by this article, in no event less than the minimum requirements prescribed by this article, as he may deem necessary on fruits, vegetables, and other agricultural products, which shall not conflict with any provisions of this article, after a thorough investigation has been made of the needs of the particular fruit, vegetable, or other agricultural product for which grades, grading rules, and regulations are contemplated; but, whenever it is deemed advisable by the commissioner, such grades shall be the same as the grades promulgated by the United States department of agriculture. Such grades, grading rules, and regulations, before they become effective, shall be submitted for approval at one or more public meetings called for that purpose and attended by representative growers and shippers of the localities interested in the industry affected. Such meetings shall be advertised at least once in a newspaper published in such localities, one week or more prior to the meeting. Said meeting shall be presided over by the commissioner or any of his duly authorized deputies and, insofar as possible and practicable, shall be conducted at such places as can be conveniently reached by representatives of the affected industry. Grades, grading rules, and regulations, established in accordance with the provisions of this section, shall not be modified during the current shipping season of the fruit, vegetable, or other agricultural product for which they are established. In like manner the commissioner may provide for

standard packages for all fruits, vegetables, and other agricultural products, but no standard packages shall be eliminated or changed without two years' notice to the industry involved.

Source: L. 31: p. 371, § 6. CSA: C. 69, § 65. CRS 53: § 7-6-6. C.R.S. 1963: § 7-5-6. L. 71: p. 156, § 5.

Cross references: For rule-making procedures, see article 4 of title 24.

35-23-107. Appeal to change regulations and grades. On receipt of a written appeal by representative growers or shippers representing at least fifty-one percent of the acreage of the commodity for which grades, grading rules, regulations, or standard packages have been established by the commissioner under the provisions of this section and section 35-23-106, protesting against the grades, grading rules, regulations, or standard packages so established, the commissioner shall call a hearing. Due notice shall be given by the commissioner to all interested parties of the date and place of such hearing, and the grades, grading rules, regulations, or standard packages shall be sustained, modified, or revoked, in the discretion of the commissioner on the basis of the evidence presented. If such grades, grading rules, regulations, or standard packages are not changed or modified by the commissioner, in accordance with the provisions of this section and section 35-23-106, they shall continue to be in full force and effect. Grades, grading rules, regulations, and standard packages, established under the provisions of this section and section 35-23-106, shall be promulgated by the commissioner and published at least once in one or more newspapers or farm journals of general circulation in the state.

Source: L. 31: p. 372, § 6. CSA: C. 69, § 66. CRS 53: § 7-6-7. C.R.S. 1963: § 7-5-7.

35-23-108. Power of regulation. The commissioner, with the concurrence of the state agricultural commission, is authorized to promulgate such rules and regulations relative to the proper marking of containers, the issue of certificates of inspection, the tagging of the vehicle of transportation, and such other rules and regulations as he deems necessary for the improvement of the quality of marketing of all fruits, vegetables, or other agricultural products.

Source: L. 31: p. 372, § 7. CSA: C. 69, § 67. CRS 53: § 7-6-8. C.R.S. 1963: § 7-5-8. L. 71: p. 157, § 6.

35-23-109. Engaging in trade prohibited. The commissioner and his deputies, inspectors, and employees are each prohibited, during their respective terms of employment or office, from engaging in this state or elsewhere, either directly or indirectly, in the business of buying or selling fruits, vegetables, or other agricultural products or in dealing in the same on commission.

Source: L. 31: p. 373, § 8. CSA: C. 69, § 68. CRS 53: § 7-6-9. C.R.S. 1963: § 7-5-9.

35-23-110. Malfeasance of inspectors - penalty. Any inspector employed under this article who knowingly makes a wrong or improper inspection of any fruit, vegetable, or other agricultural product, or knowingly and improperly certifies that the grade, quality, or condition of a fruit, vegetable, or other agricultural product does or does not conform to the standards established under this article, or fails to bring action to prosecute any violators of this article, or accepts money or other consideration directly or indirectly for an incorrect or improper performance of his duty, and any person who improperly influences any such inspector in the performance of his duty, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 31: p. 373, § 9. CSA: C. 69, § 69. CRS 53: § 7-6-10. L. 63: p. 321, § 4. C.R.S. 1963: § 7-5-10.

35-23-111. Inspection made mandatory. It is unlawful for any person, firm, corporation, or other organization to ship potatoes in excess of one thousand pounds, except those destined for commercial processing, unless they have first been inspected by a duly authorized inspector who shall issue a certificate of inspection showing the grade or other classification thereof.

Source: L. 31: p. 374, § 10. CSA: C. 69, § 70. L. 53: p. 312, § 1. CRS 53: § 7-6-11. C.R.S. 1963: § 7-5-11. L. 71: p. 157, § 7. L. 95: Entire section amended, p. 705, § 22, effective May 23.

35-23-112. Appeal of inspection. Any interested party, who is dissatisfied with any classification of grades of any fruits, vegetables, or other agricultural products made as the result of inspection under this article, within such time after the inspection and in such manner as shall be prescribed by the commissioner, may appeal to the commissioner, and the commissioner is directed to promulgate rules and regulations governing the time and manner of such appeal. Upon such appeal to him being regularly taken, the commissioner shall cause such investigation to be made and such tests to be applied as he may deem necessary to determine the true grade or classification in the particular case in question and shall issue a finding determining the true grade or classification in the particular case. Whenever an appeal to the commissioner is taken, he shall fix and assess, and collect or cause to be collected, the established fee for an original inspection for each such appeal, which shall be uniform and which shall be refunded to the person paying the same, if the findings of the commissioner on appeal are to the effect that the grade or classification as determined and certified on the original inspection was erroneous and a new or different grade or classification is determined by the commissioner. Any reinspection certificate issued as the result of an appeal shall supersede the original inspection certificate.

Source: L. 31: p. 374, § 11. CSA: C. 69, § 71. CRS 53: § 7-6-12. C.R.S. 1963: § 7-5-12. L. 71: p. 157, § 8.

35-23-113. Issuance of certificate of inspection. A certificate evidencing that official inspection has been made and designating the classification of the grades of fruits, vegetables, or other agricultural products so inspected shall be issued by the inspector and delivered to the applicant. A certificate so issued shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such fruit, vegetable, or other agricultural product at the time of inspection.

Source: L. 31: p. 376, § 14. CSA: C. 69, § 74. CRS 53: § 7-6-15. C.R.S. 1963: § 7-5-15. L. 71: p. 157, § 9.

ANNOTATION

Article does not apply to transaction between licensed dealers. Where a licensed dealer sells potatoes to another licensed dealer who is experienced in the potato business without any

inspection, the transaction is not within purview of this article. *Cole v. Lindsey*, 120 Colo. 501, 211 P.2d 544 (1949).

35-23-114. Inspection fees - agricultural products inspection cash fund. (1) The state agricultural commission, after conferring with interested industry groups, is authorized to fix, assess, and collect fees for the inspection and issuance of certificates of inspection on fruits, vegetables, and other agricultural products.

(2) (a) Such fees shall be uniform for the particular service rendered. The amount of such fees for services rendered under the provisions of this article shall be determined by

the commission as nearly as may be to the end that such fees shall pay at least fifty percent of the operational cost of the inspection service mandated by section 35-23-111, but appropriations from the general fund shall be fifty percent of the operational cost of such mandatory inspection or two hundred thousand dollars, whichever is the lesser amount, and one hundred percent of the operational costs of all other inspection services provided pursuant to this article. Such fees shall be paid by the person, firm, corporation, or other organization requesting the service at the time such service is rendered or as otherwise provided and authorized by the commission.

(b) (Deleted by amendment, L. 93, p. 353, § 1, effective April 12, 1993.)

(3) (a) Fees for inspections mandated by section 35-23-111 and fees for all other inspection services provided pursuant to this article and collected under the provisions of this section shall be deposited in the state treasury and credited to the agricultural products inspection cash fund, which fund is hereby created. All interest derived from the deposit or investment of moneys credited to the agricultural products inspection cash fund shall also be credited to the fund. All moneys credited to the agricultural products inspection cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund. All moneys in said fund are to be appropriated by the general assembly to the department of agriculture to be used for inspection services provided pursuant to this article. Moneys in the agricultural products inspection cash fund may be used:

(I) Repealed.

(II) For the department's direct and indirect costs; except that, effective July 1, 2006, no more than five percent of said moneys shall be used for the department's indirect costs.

(b) Repealed.

(4) Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the mandatory fruit and vegetable inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the agricultural products inspection cash fund.

Source: L. 31: p. 378, § 18. CSA: C. 69, § 78. L. 45: p. 342, § 2. L. 51: p. 409, § 1. CRS 53: § 7-6-19. C.R.S. 1963: § 7-5-19. L. 65: p. 197, § 10. L. 71: p. 158, § 10. L. 73: p. 201, § 1. L. 84: (2) and (3) amended, p. 938, § 1, effective April 27. L. 85: (2) and (3) amended, p. 1137, § 1, effective July 1. L. 92: Entire section amended, p. 159, § 2, effective February 25. L. 93: (2) amended, p. 353, § 1, effective April 12. L. 2002: (3) amended, p. 878, § 9, effective August 7. L. 2003: (3) amended, p. 390, § 3, effective March 5; (3) amended, p. 382, § 1, effective March 5. L. 2009: IP(3)(a) amended and (4) added, (HB 09-1249), ch. 87, p. 320, § 17, effective July 1.

Editor's note: (1) Amendments to subsection (3) by Senate Bill 03-169 and Senate Bill 03-180 were harmonized.

(2) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2003. (See L. 2003, p. 382.)

(3) Subsection (3)(a)(I)(B) provided for the repeal of subsection (3)(a)(I), effective July 1, 2006. (See L. 2003, p. 390.)

35-23-115. Information confidential. All information obtained as the result of any inspection made under the provisions of this article shall not be open to inspection by the public; except that the commissioner shall prepare and certify to any financially interested party a copy of the original inspection certificate of any inspection upon the payment to him of his fees therefor. The commissioner is authorized to prescribe rules and regulations governing the issuance of such certificates.

Source: L. 31: p. 380, § 20. CSA: C. 69, § 80. CRS 53: § 7-6-20. C.R.S. 1963: § 7-5-20. L. 71: p. 158, § 11.

Cross references: For rule-making procedures, see article 4 of title 24.

35-23-116. Penalty. Any person, firm, corporation, or other organization which violates any of the provisions of this article or willfully interferes with the commissioner or his deputies, inspectors, or employees in the performance or on account of the execution of his duties as provided by this article is guilty of a misdemeanor. Any person convicted under this article shall be punished by the revoking of his license by the commissioner and by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 31: p. 397, § 41. CSA: C. 69, § 101. CRS 53: § 7-6-41. C.R.S. 1963: § 7-5-41.

ARTICLE 23.5

Controlled Atmosphere Storage of Apples

35-23.5-101.	Short title.	35-23.5-105.	Storage in another state.
35-23.5-102.	Definitions.	35-23.5-106.	Suspension or revocation. (Repealed)
35-23.5-103.	Voluntary inspection of facility - rules - fee.	35-23.5-107.	Penalty.
35-23.5-104.	Commissioner to develop rules.	35-23.5-108.	Repeal - review of functions. (Repealed)

35-23.5-101. Short title. This article shall be known and may be cited as the “Controlled Atmosphere Storage of Apples Act”.

Source: L. 77: Entire article added, p. 1599, § 1, effective May 24.

35-23.5-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Commissioner” means the commissioner of agriculture.
- (2) “Controlled atmosphere storage” means the storage of apples under conditions which comply with the provisions of this article and the rules and regulations adopted pursuant to the provisions of this article.

Source: L. 77: Entire article added, p. 1599, § 1, effective May 24.

35-23.5-103. Voluntary inspection of facility - rules - fee. The commissioner may inspect a controlled atmosphere storage facility upon request by the operator or under conditions set forth in rules adopted by the commissioner pursuant to sections 24-4-103, C.R.S., and 35-23.5-104. The commissioner may fix, assess, and collect fees in amounts that cover actual costs associated with inspection and the issuance of certificates of inspection.

Source: L. 77: Entire article added, p. 1599, § 1, effective May 24. L. 95: Entire section amended, p. 705, § 23, effective May 23.

35-23.5-104. Commissioner to develop rules. The commissioner shall develop reasonable rules concerning the voluntary inspection of apples stored pursuant to this article and the controlled atmosphere storage of apples, including, among other factors, the following: Storage facility regulations; record keeping and reports; length of storage time, including the maximum time allowed to reach prescribed atmospheric conditions of temperature, oxygen, and carbon dioxide; quality regulations; and labeling and marketing.

Source: L. 77: Entire article added, p. 1600, § 1, effective May 24. L. 95: Entire section amended, p. 705, § 24, effective May 23.

35-23.5-105. Storage in another state. (1) When apples have been grown and stored in another state which has laws governing controlled atmosphere storage of apples similar

to the provisions in effect in this state, and the apples have been stored in compliance with those provisions, such apples may be represented as having been exposed to controlled atmosphere storage when sold in this state if the state in which they were stored permits apples which are stored in this state and in compliance with the laws of this state to be represented as having been exposed to controlled atmosphere storage when sold in that state.

(2) When apples have been grown and stored in another state which does not have laws governing controlled atmosphere storage of apples similar to provisions in effect in this state, but the apples have been stored in facilities and under conditions comparable to that required under this article and the rules adopted pursuant thereto, they may be represented as having been exposed to controlled atmosphere storage when sold in this state.

Source: L. 77: Entire article added, p. 1600, § 1, effective May 24.

35-23.5-106. Suspension or revocation. (Repealed)

Source: L. 77: Entire article added, p. 1600, § 1, effective May 24.

Editor's note: Section 35-23.5-108 provided for the repeal of this section effective July 1, 1995. (See L. 91, p. 690.)

35-23.5-107. Penalty. (1) It is unlawful for any person to:

(a) Operate a facility for the storage of apples that is represented as being a controlled atmosphere storage facility unless it meets the standards set pursuant to rule by the commissioner under the provisions of this article;

(b) Sell, exchange, offer for sale, advertise, label, or otherwise represent that apples have been exposed to controlled atmosphere storage, unless such apples have been stored in a facility that meets the standards set pursuant to rule by the commissioner under provisions of this article.

(c) Repealed.

(2) Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each such offense. Each day of violation shall be deemed a separate offense.

(3) The commissioner may initiate an action in the proper court for injunctive relief to prevent or restrain any violation of this article or the rules adopted pursuant thereto.

Source: L. 77: Entire article added, p. 1600, § 1, effective May 24. **L. 95:** IP(1), (1)(a), and (1)(b) amended, p. 705, § 25, effective May 23.

Editor's note: Section 35-23.5-108 provided for the repeal of subsection (1)(c) effective July 1, 1995. (See L. 91, p. 690.)

35-23.5-108. Repeal - review of functions. (Repealed)

Source: L. 88: Entire section added, p. 933, § 27, effective April 28. **L. 90:** Entire section amended, p. 333, § 21, effective April 3. **L. 91:** Entire section amended, p. 690, § 66, effective April 20. **L. 95:** Entire section amended, p. 706, § 26, effective May 23. **L. 97:** Entire section repealed, p. 1030, § 62, effective August 6.

ARTICLE 24

Dairy Products

35-24-101 to 35-24-208. (Repealed)

Source: L. 85: Entire article repealed, p. 902, § 4, effective April 5.

Editor's note: This article was numbered as article 6 of chapter 7, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning dairy products and imitation dairy products, see parts 1 and 2 of article 5.5 of title 25.

ARTICLE 24.5

Aquaculture

35-24.5-101.	Short title.	35-24.5-108.	commissioner.
35-24.5-102.	Legislative declaration.		Delegation of duties - cooperative agreements.
35-24.5-103.	Definitions.	35-24.5-109.	Facility permit required.
35-24.5-104.	Aquaculture board.	35-24.5-110.	Civil penalties - disciplinary actions.
35-24.5-105.	Duties of the board.	35-24.5-111.	Aquaculture fund created.
35-24.5-106.	Rules.		
35-24.5-107.	Powers and duties of the		

35-24.5-101. Short title. This article shall be known and may be cited as the "Colorado Aquaculture Act".

Source: L. 91: Entire article added, p. 189, § 1, effective June 7.

35-24.5-102. Legislative declaration. (1) The general assembly finds and declares that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to promote agricultural diversification, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the land and water resources of the state, and provide other benefits to the state.

(2) The general assembly further finds and declares that aquaculture shall be considered an agricultural enterprise as defined in the "Colorado Agricultural Development Authority Act", article 75 of this title, and, for property tax assessment purposes, shall be classified pursuant to section 39-1-102 (1.6) (b), C.R.S.

Source: L. 91: Entire article added, p. 189, § 1, effective June 7.

35-24.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Aquaculture" means the controlled propagation, growth, and harvest of, and subsequent commerce in, cultured aquatic stock, including but not limited to fish and other aquatic vertebrates, mollusks, crustaceans, and algae and other aquatic plants, by an aquaculturist.

(2) "Aquaculture facility" means any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes.

(3) "Aquaculturist" means an individual, partnership, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof.

(4) "Aquatic disease" means any departure from a normal state of health of aquatic organisms caused by disease agents.

(5) "Aquatic organism" means an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, or aquatic insect or other aquatic invertebrate. "Aquatic organism" includes the viable gametes (eggs or sperm) of an aquatic organism.

(6) "Board" means the aquaculture board.

(7) "Commercial aquaculturist" means an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes.

- (8) "Commission" means the state agricultural commission.
- (9) "Commissioner" means the commissioner of agriculture.
- (10) "Cultured aquatic stock" means aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms; except that "cultured aquatic stock" does not include state-owned fish, crustaceans, amphibians, or mollusks lawfully taken and used or sold for bait only.
- (11) "Department" means the department of agriculture.
- (12) "Division" means the division of parks and wildlife in the department of natural resources.

Source: L. 91: Entire article added, p. 190, § 1, effective June 7.

35-24.5-104. Aquaculture board. (1) There is hereby created and established in the department an aquaculture board, which shall consist of the following:

(a) The five persons who make up the fish health board as established in section 33-5.5-101, C.R.S.; and

(b) Two additional members, to be appointed by the commissioner, who are familiar with the commercial marketing or processing of aquatic organisms and their products or with the financing of commercial aquaculture.

(2) The term of office of the two additional members shall be three years. Each of these members shall serve until his or her successor has been appointed and qualified, and either member shall be eligible for reappointment. They shall serve without compensation except for actual and necessary traveling expenses.

(3) The board shall annually select a chairman and a vice-chairman, who may be the same as the chairman and vice-chairman of the fish health board.

(4) A majority of the board shall constitute a quorum, and, if a quorum is present, in person or by telephone, the board may act upon a vote of a majority of those present.

(5) The board shall constitute a "public entity" and each member and employee of the board shall constitute a "public employee" within the meaning of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(6) The board shall exercise its powers and perform its duties and functions specified in this article under the department and the executive director thereof as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

Source: L. 91: Entire article added, p. 191, § 1, effective June 7.

35-24.5-105. Duties of the board. (1) The board shall consider, initiate, and recommend rules, not inconsistent with law, to the commissioner concerning the regulation of the aquaculture industry and its markets, except for rules that regulate, control, or otherwise relate to fish health, to the spread of aquatic disease, or to the importation into the state or the distribution and management of any exotic aquatic species, all of which subjects are within the jurisdiction of the parks and wildlife commission.

(2) The board shall develop appropriate programs to assist in the protection, growth, and promotion of the aquaculture industry of the state and shall recommend policies and procedures to the commissioner and the commission for the accomplishment of such a plan.

(3) The board shall review any suspensions or revocations of aquaculture facility permits and any orders for the destruction of aquatic organisms or for quarantine of aquaculture facilities which last beyond thirty days, and all such suspensions, revocations, and orders shall be conditioned upon the board's approval; except that destruction orders may be approved by the commissioner upon a determination that a situation exists which threatens imminent danger to existing aquatic populations or to human health and safety and that no more reasonable means exist to control the situation. Destruction of aquatic organisms or quarantines shall be done in accordance with applicable regulations of the department.

(4) The board shall review aquaculture facility permitting procedures and shall make recommendations to the department concerning such procedures and any related fees and charges.

Source: L. 91: Entire article added, p. 191, § 1, effective June 7. **L. 2012:** (1) amended, (HB 12-1317), ch. 248, p. 1236, § 94, effective June 4.

35-24.5-106. Rules. (1) To carry out the provisions of this article, the board is authorized to consider and recommend to the commissioner appropriate rules to be promulgated pursuant to section 24-4-103, C.R.S., including but not limited to rules concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article;

(b) Standards applicable to products of cultured aquatic stock offered for sale; and

(c) The establishment of standards for and certification of private aquaculture facilities, which may include standards for commercial aquaculturists.

(2) Nothing in this section diminishes or supersedes the authority of the division or the parks and wildlife commission to regulate or manage wild populations of aquatic organisms in the waters of the state or in facilities controlled or managed by the division or by the United States fish and wildlife service.

Source: L. 91: Entire article added, p. 192, § 1, effective June 7. **L. 2012:** (2) amended, (HB 12-1317), ch. 248, p. 1236, § 95, effective June 4.

35-24.5-107. Powers and duties of the commissioner. (1) To carry out the provisions of this article, the commissioner is authorized to adopt appropriate rules pursuant to section 24-4-103, C.R.S., including but not limited to rules concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article and article 5.5 of title 33, C.R.S.;

(b) Standards applicable to products of cultured aquatic stock offered for sale; and

(c) The establishment of standards for and certification of private aquaculture facilities, which may include standards for commercial aquaculturists.

(2) Nothing in this section diminishes or supersedes the authority of the division or the parks and wildlife commission to regulate or manage wild populations of aquatic organisms in the waters of the state or in facilities controlled or managed by the division or by the United States fish and wildlife service.

(3) The commissioner shall institute appropriate programs to assist in the protection, growth, and promotion of the aquaculture industry in the state.

(4) The commissioner shall provide facilities and support to the board for use in carrying out its duties.

(5) The commissioner shall provide for the issuance of permits for aquaculture facilities and shall establish permit fees to offset the costs of regulating the aquaculture industry.

(6) The commissioner shall enforce all rules and regulations concerning aquaculture except those which relate to fish health, or to the spread of aquatic diseases, or to the importation into the state or the distribution and management of any exotic aquatic species, all of which rules and regulations shall be enforced by the division.

(7) The commissioner may contract for the services of any certified aquatic disease laboratory or certified aquatic disease specialist in this state or in any other state, or with any other government agency, through intergovernmental agreement, contract, or memorandum of understanding to implement and enforce the rules and regulations of the commissioner.

(8) The commissioner may quarantine aquaculture facilities subject to the review of the aquaculture board pursuant to section 35-24.5-105 (3).

(9) Nothing in this section shall be construed to conflict with or to supersede the authority of the Colorado department of public health and environment to regulate the growing, harvesting, and shipping of molluscan shellfish or any other processed fish or seafood products intended for human consumption.

Source: L. 91: Entire article added, p. 193, § 1, effective June 7. **L. 94:** (9) amended, p. 2804, § 574, effective July 1. **L. 2012:** (2) amended, (HB 12-1317), ch. 248, p. 1236, § 96, effective June 4.

35-24.5-108. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(2) After thorough consultation with the board, the department may receive and expend grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any agency of this state or its political subdivisions for the purposes of this article.

Source: L. 91: Entire article added, p. 194, § 1, effective June 7.

35-24.5-109. Facility permit required. (1) On or after January 1, 1992, no person shall operate a fish production facility for the purpose of propagating, selling, trading, or transporting live fish or viable gametes unless such fish production facility possesses a valid and current aquaculture facility permit issued by the commissioner.

(2) One or more satellite stations of a fish production facility may operate under one aquaculture facility permit if all such satellite stations are listed on such facility permit.

(3) Each person seeking to obtain an aquaculture facility permit shall make application to the commissioner on forms prescribed and furnished by the commissioner.

(4) An annual facility permit fee in an amount to be established by the commissioner, not to exceed one hundred eighty dollars, shall accompany the application.

(5) No aquaculture facility permit shall be required for persons to obtain and possess live fish for aquaria or private ponds so long as such aquaria or ponds are hydrologically closed systems and are not connected to state waters and so long as live fish which have been held in such aquaria or ponds are not released into state waters.

(6) No aquaculture facility permit shall be required of any federal, state, or county agency or of any person possessing a valid scientific collecting permit who is conducting research or educational activities with lawfully acquired fish, nor shall such permit be required of any zoo accredited by the American association of zoological parks and aquariums; except that such persons and entities must adhere to all other division of parks and wildlife regulations including record-keeping and importation requirements.

(7) Any person who operates or uses an aquaculture facility, whether as owner, operator, lessee, or pursuant to any contract, or who otherwise buys, sells, trades, or acts as a broker of live fish or viable gametes, shall be subject to all applicable regulations including record-keeping and importation requirements.

Source: L. 91: Entire article added, p. 194, § 1, effective June 7.

35-24.5-110. Civil penalties - disciplinary actions. (1) (a) Any person that violates any of the provisions of this article or any rule or regulation promulgated by the commission pursuant to this article may be punished upon a finding of such violation by the commissioner as follows:

(I) In any first administrative proceeding, a fine of not less than one hundred dollars nor more than one thousand dollars;

(II) In any subsequent administrative proceeding against the same person, a fine of not less than one thousand dollars nor more than five thousand dollars.

(b) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(2) In addition to the penalties provided in subsection (1) of this section, the commissioner may withhold, deny, suspend, or revoke the aquaculture facility permit of any

aquaculturist if the commissioner finds that such person has committed any of the following:

- (a) Fraud or material deception in the obtaining or renewal of a permit;
- (b) Failure to comply with any provision of this article or rules promulgated by the commissioner or any lawful order of the commissioner pursuant thereto;
- (c) Failure to comply with any provision of section 33-6-114.5 (1) to (6), C.R.S., or with any rule or regulation of the division, or with any statutory provision relating to fish health, the spread of aquatic diseases, or the importation into the state, distribution, or management of any exotic aquatic species;
- (d) Contracting with or assisting unlicensed persons to perform services or operate in a manner for which a license is required under this article.

(3) Any revocation or suspension of a permit by the commissioner shall be subject to review by the board pursuant to section 35-24.5-105 (3); except that the commissioner may issue an order to cease and desist from doing any act which is determined to present an immediate danger to other aquatic stock pending such review by the board. For the purpose of enforcing any such cease-and-desist order, the commissioner has, in addition to any other powers conferred by statute, the power to exercise such physical control over property and persons as may be necessary to protect the health of such aquatic stock or of the public.

(4) Whenever the commissioner possesses sufficient evidence satisfactory to the commissioner indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 91: Entire article added, p. 195, § 1, effective June 7.

35-24.5-111. Aquaculture fund created. All fees and penalties collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the aquaculture cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the direct and indirect costs of the administration of this article.

Source: L. 91: Entire article added, p. 196, § 1, effective June 7.

ARTICLE 25

Colorado Bee Act

35-25-101.	Short title.		artificial products - enforcement. (Repealed)
35-25-102.	Definitions.		
35-25-102.5.	Licensing functions subject to periodic review. (Repealed)	35-25-110.	Authority to enter premises. Penalties.
35-25-103.	Enforcement.	35-25-112.	Injunctive relief.
35-25-104.	Advisory committee and districts.	35-25-113.	Agreements.
35-25-105.	Rules and regulations.	35-25-114.	Exemption. (Repealed)
35-25-106.	Examination of apiaries.	35-25-115.	Alfalfa leaf-cutter bees - importation - possession - enforcement - penalties. (Repealed)
35-25-107.	Inspection of beehives for interstate movement.		
35-25-108.	Beehives equipped with movable combs - certificate - permit.	35-25-116.	Bee inspection fund - transfer of moneys to plant health, pest control, and environmental protection cash fund.
35-25-109.	Labeling of adulterated or	35-25-117.	Emergency powers.

35-25-101. Short title. This article shall be known and may be cited as the “Colorado Bee Act”.

Source: **L. 73:** p. 203, § 1. **C.R.S. 1963:** § 7-7-1. **L. 90:** Entire section amended, p. 1593, § 1, effective April 3.

35-25-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Advisory committee” means that committee appointed by the commissioner pursuant to the provisions of section 35-25-104.

(1.5) Repealed.

(2) “Apiary” or “beeyard” means a hive or hives of bees in close proximity to one another.

(2.5) Repealed.

(3) “Beekeeper” means any person producing or causing to be produced bees or bee products.

(4) “Bees” means honey-producing insects of the genus *apis*, including all life stages.

(5) “Beeswax” means the wax produced by the honeybee.

(6) Repealed.

(7) “Brood” means bees in any stage of development preceding emergence as adults.

(8) “Certificate of inspection” means a document issued by the commissioner indicating the health conditions of the colony or apiary.

(9) “Colony” means one group of bees established in a place acceptable to said bees for the rearing of young and the storage of honey.

(10) “Comb” means any structure acceptable to bees for the storage of honey and pollen and the rearing of brood.

(11) “Commissioner” means the commissioner of agriculture.

(12) “Contagious disease” means any disease produced by disease agents or parasitic agents to bees or beekeepers which shall be determined by the commissioner as being hazardous to the beekeeping industry in this state.

(13) “Entry permit” means a document issued by the commissioner permitting entry of bees, equipment, or appliances into the state of Colorado, accompanied by a health certificate from the originating state indicating the number of colonies and county of destination.

(14) “Equipment” means any object that is attached to or made a part of a hive.

(15) “Frame” means any device designed to receive single sheets of wax foundation and in which bees are encouraged to draw comb.

(16) “Hive” means any structure containing bees and designed to receive movable frames of comb.

(16.5), (17), and (18) Repealed.

(19) “Person” means any body politic, individual, partnership, association, corporation, company, joint stock association, or organized group of persons whether incorporated or not and includes any trustee, receiver, or assignee. “Body politic” means any agency of this state or of the federal government or any unit of local government including any county, city, town, school district, local improvement or service district, special district, or other governmental unit having authority under the law to tax or impose assessments, including special assessments.

Source: **L. 73:** p. 203, § 1. **C.R.S. 1963:** § 7-7-2. **L. 75:** (17) R&RE and (20) and (21) added, p. 1347, § 1, effective May 31. **L. 83:** (16.5) added, p. 1359, § 1, effective June 1. **L. 85:** (16.5) repealed, p. 1140, § 4, effective May 31. **L. 90:** (1.5), (2.5), (6), (17), and (18) repealed and (12) and (19) amended, pp. 1597, 1593, §§ 13, 2, effective April 3.

35-25-102.5. Licensing functions subject to periodic review. (Repealed)

Source: **L. 79:** Entire section added, p. 1612, § 8, effective June 7. **L. 88:** Entire section amended, p. 933, § 28, effective April 28. **L. 90:** Entire section repealed, p. 1597, § 13, effective April 3.

35-25-103. Enforcement. (1) The commissioner or his authorized agents are authorized and directed to enforce the provisions of this article.

(2) (a) If it appears to the commissioner after examination of the facts that a violation of any provision of this article has occurred, he may refer the facts to the district attorney for the county in which the violation occurred.

(b) Nothing in this article shall be construed as requiring the commissioner to report for prosecution minor violations of this article or rules and regulations when the commissioner believes that the public interest will best be served by a suitable notice of warning in writing.

(3) Each district attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted in any competent court without delay.

(4) The commissioner may, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this article.

(5) (a) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person being charged has been given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the commissioner is found to have lacked substantial justification to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the state treasurer, who shall credit the same to the bee inspection fund.

(f) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: L. 73: p. 204, § 1. C.R.S. 1963: § 7-7-3. L. 90: (2) amended and (5) and (6) added, p. 1593, § 3, effective April 3.

35-25-104. Advisory committee and districts. (1) There is hereby created an advisory committee to be nominated by the beekeeping industry and composed of seven members to be appointed by the commissioner. The members shall meet with and advise the commissioner concerning the needs of the beekeeping industry and shall assist in formulating rules and regulations pertaining to the administration of this article. The members shall be as follows:

(a) A beekeeper from the area of the Colorado river drainage basin, to be known as district 1;

(b) A beekeeper from the area of the Rio Grande river drainage basin and all of Chaffee county, to be known as district 2;

(c) A beekeeper from the area of the Arkansas river drainage basin, except Chaffee county, to be known as district 3;

(d) A beekeeper from the area of the Platte and Republican rivers drainage basin, to be known as district 4;

(e) The president of the Colorado beekeepers association;

- (f) The extension entomologist;
- (g) One member who is a beekeeper at large.
- (2) Members of the advisory committee shall receive no compensation.
- (3) Repealed.

Source: L. 73: p. 205, § 1. C.R.S. 1963: § 7-7-4. L. 86: (3) added, p. 425, § 59, effective March 26. L. 90: (1)(g) and (2) amended and (3) repealed, pp. 1594, 1597, §§ 4, 13, effective April 3.

35-25-105. Rules and regulations. (1) The commissioner is authorized to adopt rules and regulations pursuant to the provisions of article 4 of title 24, C.R.S., for the administration of this article.

(2) The powers and duties of the commissioner under this article may be delegated by the commissioner to employees of the department of agriculture designated by him.

Source: L. 73: p. 205, § 1. C.R.S. 1963: § 7-7-5. L. 90: Entire section amended, p. 1595, § 5, effective April 3.

35-25-106. Examination of apiaries. (1) The commissioner, when he has reason to suspect disease in any apiary, may examine all reported or suspected apiaries. If any contagious disease is present, he may examine all apiaries in the same locality and ascertain whether or not any contagious disease exists in the apiaries. If satisfied of the existence of any such contagious disease, the commissioner may burn, sterilize, or medically treat said apiary in strict compliance with rules and regulations pertaining thereto, or the commissioner may require the beekeeper to burn, sterilize, or medically treat said apiary.

(2) If a dispute arises as to the diagnosis of the disease, a sample shall be taken and mailed to the nearest bee disease and investigation laboratory for positive identification. Should the occasion arise, the commissioner may preserve from destruction diseased colonies for experimental purposes.

Source: L. 73: p. 205, § 1. C.R.S. 1963: § 7-7-6. L. 90: (1) amended, p. 1595, § 6, effective April 3.

35-25-107. Inspection of beehives for interstate movement. Any beekeeper or person requesting an inspection of beehives for contagious disease for the purpose of interstate movement shall be liable for all costs of such inspection. The beekeeper or his agent shall accompany and assist the inspector in making the inspection.

Source: L. 73: p. 205, § 1. C.R.S. 1963: § 7-7-7. L. 81: IP(1) amended, p. 1704, § 2, effective June 5. L. 83: (1) and (4) amended and (1.1) and (1.3) added, p. 1359, § 2, effective June 1. L. 85: (1) R&RE and (1.1) repealed, pp. 1139, 1140, §§ 2, 4, effective May 31. L. 90: Entire section R&RE, p. 1595, § 7, effective April 3.

35-25-108. Beehives equipped with movable combs - certificate - permit. (1) Beehives shall be equipped with movable combs.

(2) Bees on combs and used beekeeping appliances or equipment entering Colorado must be accompanied by a certificate declaring the apiaries from which the bees, appliances, or equipment originated to be free from contagious diseases. This certificate shall be from a duly authorized inspector of the state of origin.

(3) Anyone desiring to move bees on combs or used bee equipment into the state of Colorado shall be required to secure an entry permit from the commissioner. Application for this permit shall be accompanied by a timely certificate of inspection, as defined by the commissioner, issued from the state apiary inspection agency of the state of origin, showing freedom from contagious disease, the number of colonies to be moved, and the county to which the owner or operator desires to move. The owner or operator of the bees or equipment shall notify the commissioner upon arrival in the state.

Source: L. 73: p. 206, § 1. C.R.S. 1963: § 7-7-8. L. 90: Entire section amended, p. 1595, § 8, effective April 3.

35-25-109. Labeling of adulterated or artificial products - enforcement. (Repealed)

Source: L. 73: p. 206, § 1. C.R.S. 1963: § 7-7-9. L. 75: Entire section R&RE, p. 1347, § 2, effective May 31. L. 77: (3) added, p. 1602, § 1, effective July 1. L. 90: Entire section repealed, p. 1597, § 13, effective April 3.

35-25-110. Authority to enter premises. The commissioner is authorized, during reasonable business hours, to enter upon or into any premises, lands, buildings, or places where bees or beekeeping appliances are kept for carrying out the provisions of this article.

Source: L. 73: p. 207, § 1. C.R.S. 1963: § 7-7-10.

35-25-111. Penalties. In addition to civil penalties which may be imposed pursuant to section 35-25-103 (5), any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for the first offense and, for any offense thereafter, is guilty of a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 73: p. 207, § 1. C.R.S. 1963: § 7-7-11. L. 75: Entire section amended, p. 1348, § 3, effective May 31. L. 90: Entire section amended, p. 1596, § 9, effective April 3. L. 2002: Entire section amended, p. 1548, § 309, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-25-112. Injunctive relief. The commissioner may institute an action to enjoin any violation of this article or any rule or regulation promulgated under this article. A violation of this article or any rule or regulation promulgated pursuant thereto is declared to constitute a public nuisance. Such action for injunction may be maintained notwithstanding the existence of other legal remedies and notwithstanding the pendency or successful completion of a criminal prosecution. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 73: p. 207, § 1. C.R.S. 1963: § 7-7-12. L. 90: Entire section amended, p. 1596, § 10, effective April 3.

Cross references: For abatement of a public nuisance, see part 3 of article 13 of title 16.

35-25-113. Agreements. The commissioner may enter into agreements with any municipal, county, federal, or other state agencies and delegate authority to representatives thereof when such agencies or representatives may assist in carrying out the provisions of this article.

Source: L. 73: p. 207, § 1. C.R.S. 1963: § 7-7-13.

35-25-114. Exemption. (Repealed)

Source: L. 77: Entire section added, p. 1602, § 2, effective July 1. L. 80: Entire section amended, p. 692, § 2, effective April 13. L. 81: Entire section amended, p. 1704, § 3, effective June 5. L. 83: Entire section repealed, p. 1360, § 3, effective June 1.

35-25-115. Alfalfa leaf-cutter bees - importation - possession - enforcement - penalties. (Repealed)

Source: **L. 80:** Entire section amended, p. 691, § 1, effective April 13. **L. 81:** (6) amended, p. 1706, § 1, effective May 18.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 1984. (See L. 81, p. 1706.)

35-25-116. Bee inspection fund - transfer of moneys to plant health, pest control, and environmental protection cash fund. All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the bee inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

Source: **L. 85:** Entire section added, p. 1140, § 3, effective May 31. **L. 86:** Entire section amended, p. 1221, § 33, effective May 30. **L. 90:** Entire section amended, p. 1596, § 11, effective April 3. **L. 2009:** Entire section amended, (HB 09-1249), ch. 87, p. 318, § 11, effective July 1.

35-25-117. Emergency powers. If, at any time, the commissioner determines the existence of any imminent hazard inimical to the beekeeping industry in this state, the commissioner may take appropriate action, including but not limited to: Inspecting any public or private place; establishing and enforcing quarantines; issuing and enforcing orders and rules for the control and eradication of said hazard; and taking such other action as may seem advisable and not contrary to law as the commissioner is empowered with pursuant to this title. The commissioner is hereby authorized to seek reimbursement from the general assembly for any funds expended in the exercise of these emergency powers.

Source: **L. 90:** Entire section added, p. 1596, § 12, effective April 3. **L. 2002:** Entire section amended, p. 879, § 10, effective August 7.

ARTICLE 26

Colorado Nursery Act

Editor's note: This article was numbered as article 15 of chapter 6, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

35-26-101.	Short title.	35-26-108.	Access to locations and records - administrative subpoena - complaints and investigations.
35-26-102.	Definitions.	35-26-109.	Penalties.
35-26-103.	Inspections.	35-26-110.	Out-of-state nurseries.
35-26-104.	Labeling.	35-26-111.	Rules and regulations.
35-26-105.	Prohibited acts - removal from sale - advisory alerts.	35-26-112.	Delegation of duties.
35-26-106.	Colorado nursery fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.	35-26-113.	Bodies politic.
		35-26-114.	Enforcement.
		35-26-115.	Termination of function - repeal of article. (Deleted by amendment)
35-26-107.	Advisory committee - sunset review. (Repealed)		

35-26-101. Short title. This article shall be known and may be cited as the "Colorado Nursery Act".

Source: L. 71: R&RE, p. 143, § 1. C.R.S. 1963: § 6-15-1.

ANNOTATION

Applied in *Richlawn Turf Farms, Inc. v. United States*, 26 Bankr. 206 (Bankr. D. Colo. 1982).

35-26-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advertisement" means the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property.

(1.5) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(1.7) "Body politic" means any agency of this state or of the federal government, or any unit of local government, including any county, city, town, school district, local improvement or service district, or special district, or any other governmental unit having authority under the law to tax or impose assessments, including special assessments.

(2) "Botanical name" means that name used in the binomial system of nomenclature consisting of the genus and the species of a particular plant and, if there be one, the variety name of the species.

(3) "Collected nursery stock" means any nursery stock removed from its original native habitat.

(4) "Collector" means any person who collects nursery stock for sale purposes.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Common name" means the name of any plant which is in common and widest use in the state, to designate the kind and variety of a plant.

(7) "Dead or dying condition" means a condition in which a plant is without living tissue, or is weakened to a point that it is unlikely to grow with reasonable vigor when given reasonable care.

(8) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(9) "Department" means the department of agriculture.

(9.5) "Grown within Colorado" means propagated from seed or cuttings or by budding or grafting in Colorado, or grown as a native stand of trees or shrubs or other stock growing on property owned or leased in Colorado by the nursery who intends to collect and sell such stock.

(10) "Insect pests" means the small invertebrate animal in the phylum anthropoda comprising the class insecta which generally have segmented bodies, are six-legged, and are usually winged, such as beetles, bugs, bees, and flies, including a similar class of arthropods whose members are wingless and generally have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice which are injurious to nursery stock.

(11) "Landscape contractor" means a person who provides nursery stock for compensation or value as part of a site development or landscaping service.

(12) "Nursery" means any grounds or premises on or in which nursery stock is propagated, held, or grown for sale purposes.

(13) "Nurseryman" means any person owning, leasing, or managing a nursery. All persons engaged in the operation of a nursery are farmers and are engaged in agriculture for all statutory purposes.

(14) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines; turfgrass sod, seedlings, perennials, biennials; and buds, cuttings, grafts, and scions thereof, grown or collected or kept for propagation, sale, or distribution; except that it does not mean dormant bulbs, tubers, roots, corms, rhizomes, pips, field, vegetable, or flower seeds, bedding plants, annual plants, and florists' greenhouse plants, flowers, or cuttings commonly known as greenhouse stock.

(15) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(16) "Orchard plants" means trees, shrubs, and vines which are grown solely for their fruit or other products.

(17) "Person" means any firm, partnership, association, corporation, society, individual, or combination of individuals.

(18) "Place of business" means each separate nursery, store, stand, sales ground, lot, or any location from which nursery stock is being sold, offered for sale, or distributed.

(19) "Plant diseases" means the pathological condition in nursery stock caused by fungi, bacteria, nematodes, viruses mycoplasmas, or parasitic seed plants.

(20) "Stop-sale order" means a written order prohibiting the sale of nursery stock.

(21) "Turfgrass sod" means a strip or section of one or more grasses or other plants acceptable for lawn plantings which, when severed from its growing site, contains sufficient plant roots to remain intact, and does not contain weeds in excess of the amounts specified by the commissioner.

(22) "Weed" means any plant which grows where not wanted.

Source: L. 71: R&RE, p. 143, § 1. C.R.S. 1963: § 6-15-2. L. 83: (1), (11), (19), and (21) amended and (1.5), (1.7), and (22) added, p. 1361, §§ 1, 2, effective July 1. L. 91: (1), (1.5), (5), (7), (8), (10), (12), (15), and (20) amended, p. 151, § 5, effective July 1. L. 96: (9.5) added, p. 373, § 1, effective April 17.

35-26-103. Inspections. (1) (a) Except as otherwise provided in this section, premises in this state on which nursery stock is kept for sale or offered for sale and all areas in this state that are sources of collected nursery stock may be inspected by the commissioner or the commissioner's authorized agents using a risk-based approach. If any person requests an inspection of crops, plant material, or other articles or premises for pests, the commissioner shall provide such inspection and issue a certificate setting forth the facts of said inspection. Inspections may also be made by the commissioner or the commissioner's authorized agents at any time deemed appropriate by the commissioner based on information known to the commissioner or based on any complaint received by the commissioner alleging failure to comply with any provision of this article or any rule promulgated pursuant to this article.

(b) Any nursery that only sells nursery stock that is grown within Colorado and does not export such stock outside of Colorado is exempt from the inspection requirements specified in paragraph (a) of this subsection (1); except that such nursery may be inspected upon request if the required inspection fee is paid.

(2) No person shall sell in this state any nursery stock except from sources available for inspection.

(3) The commissioner may promulgate rules establishing minimum standards for the qualification of individuals who are authorized to make inspections as agents of the commissioner under this article and who are not employees of the department. The commissioner may charge an annual fee for qualifying such individuals as inspectors pursuant to this subsection (3). Such fee shall be in an amount sufficient to defray the costs of qualifying inspectors pursuant to this subsection (3).

(4) On an annual basis, the commissioner shall make public the results of such inspections in order to inform the public as to the major sale sources of nursery stock found not to be of the quality permitted to be sold, and the location where such nursery stock was offered for sale. Publication of such reports shall be as provided for in sections 35-1-107 (3) and 24-1-136, C.R.S.

Source: L. 71: R&RE, p. 145, § 1. C.R.S. 1963: § 6-15-3. L. 73: p. 198, § 5. L. 91: Entire section amended, p. 152, § 6, effective July 1. L. 96: Entire section amended, p. 374, § 3, effective April 17. L. 2002: (1)(a) amended, p. 309, § 1, effective April 18.

35-26-104. Labeling. (1) There shall be securely attached to each item of nursery stock when offered for sale or delivered, or to each bundle or lot when sold as a single lot

of the same kind, grade, size, and variety, a label showing the correct botanical or accepted common name and the grade or size of such nursery stock.

(2) The grade or size shall meet the specifications established by rules or regulations after public hearing and publication by the commissioner.

(3) The labeling required in subsection (1) of this section shall not apply to turfgrass sod. Each and every lot of turfgrass sod sold shall be labeled by stating on the sales contract, invoice, or bill of lading such information as required by the commissioner.

Source: L. 71: R&RE, p. 145, § 1. C.R.S. 1963: § 6-15-4. L. 83: (3) added, p. 1362, § 3, effective July 1.

35-26-105. Prohibited acts - removal from sale - advisory alerts. (1) No person shall sell or offer for sale:

- (a) Nursery stock in a dead or dying condition;
- (b) Nursery stock infested or infected with insect pests or plant diseases; or
- (c) Nursery stock in violation of any other provision of this article or any rules or regulations promulgated pursuant to this article.

(2) The commissioner or his authorized agents shall issue a stop-sale order to any person offering nursery stock for sale in violation of any provision of this article or any rules or regulations promulgated pursuant to this article. Any person receiving a stop-sale order shall remove such stock from sale immediately.

(3) Failure to comply with any stop-sale order may result in penalties as set forth in section 35-26-109.

(4) If the commissioner makes a finding, after notice and opportunity for a hearing, that substandard plant material is being sold by a nursery outside of Colorado to any nursery in this state, the commissioner may ban any products from said nursery from sale or distribution in Colorado and any further shipments of nursery stock from said nursery may be seized and destroyed. Upon such banning, the commissioner shall issue an alert to all persons registered under this article setting forth the commissioner's finding and advising registrants that the purchase of plant material from such offending nursery constitutes a violation of this article.

Source: L. 71: R&RE, p. 145, § 1. C.R.S. 1963: § 6-15-5. L. 83: (1) and (2) amended, p. 1362, § 4, effective July 1. L. 91: (1)(b) amended and (3) and (4) added, p. 153, § 7, effective July 1.

35-26-106. Colorado nursery fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) A person shall not engage in the business of selling nursery stock in this state, nor shall he advertise with the intent and purpose of selling nursery stock in this state, without having first obtained a registration issued by the commissioner. Such registration shall expire on December 31 of each year. Application for registration shall be submitted on a form prescribed by the commissioner. The commissioner shall, by rule or regulation, establish a registration fee for each place of business. Such fee shall not exceed one hundred dollars. Applicants for a registration who were registered at any time during the calendar year immediately preceding the year for which application is made shall apply for a registration by March 1 or pay an amount double the registration fee. No registration is transferable. All registrants shall inform the commissioner in writing of any change of address prior to any such change of address. All registrants shall meet the requirements of this article and the rules and regulations promulgated pursuant to this article.

(2) Collectors shall produce upon demand, written evidence of authorization to have collected any and all nursery stock held or offered for sale. Such evidence of authorization shall provide information as required by rule and regulation promulgated pursuant to this article.

(3) A charge for the actual cost incurred in making inspections shall be collected to defray the costs of inspections made pursuant to this article. The commissioner shall, by

rule or regulation, establish a minimum charge per inspection, and shall determine the actual cost incurred in making inspections and establish the charge therefor.

(4) All fees and charges collected pursuant to this article shall be transmitted to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the Colorado nursery fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

Source: L. 71: R&RE, p. 145, § 1. C.R.S. 1963: § 6-15-6. L. 73: p. 197, § 1. L. 83: (1) and (2) amended, p. 1362, § 5, effective July 1. L. 87: Entire section amended, p. 1285, § 1, effective July 1. L. 91: (1) to (3) amended, p. 153, § 8, effective July 1. L. 2009: (4) amended, (HB 09-1249), ch. 87, p. 318, § 12, effective July 1.

35-26-107. Advisory committee - sunset review. (Repealed)

Source: L. 71: R&RE, p. 146, § 1. C.R.S. 1963: § 6-15-7. L. 73: p. 197, § 2. L. 86: (3) added, p. 425, § 60, effective March 26. L. 91: (1) and (3)(a) amended, p. 154, §§ 9, 10, effective July 1.

Editor's note: Subsection (3)(a) provided for the repeal of this section, effective July 1, 1996. (See L. 91, p. 154.)

35-26-108. Access to locations and records - administrative subpoena - complaints and investigations. (1) (a) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all buildings, yards, warehouses, and storage facilities owned or operated by a registrant in which any nursery stock is kept, stored, handled, processed, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this article.

Source: L. 71: R&RE, p. 146, § 1. C.R.S. 1963: § 6-15-8. L. 91: Entire section amended, p. 155, § 11, effective July 1.

35-26-109. Penalties. (1) Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who violates any provision of this article, or any rule or regulations made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(3) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(4) If the commissioner is unable to collect such civil penalty or if any person fails to pay all of the civil penalty or a set portion as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(5) Before imposing any civil penalty under this section, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) (Deleted by amendment, L. 91, p. 155, § 12, effective July 1, 1991.)

Source: L. 71: R&RE, p. 146, § 1. C.R.S. 1963: § 6-15-9. L. 73: p. 197, § 3. L. 83: (2), (5), and (6), amended, p. 1363, § 6, effective July 1. L. 91: Entire section amended, p. 155, § 12, effective July 1. L. 2002: (1) amended, p. 1548, § 310, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-26-110. Out-of-state nurseries. (1) The commissioner shall require out-of-state nurseries selling nursery stock in the state of Colorado to deliver to the commissioner a certified copy of the "state of origin" certificate of inspection of the nursery. This requirement may be satisfied by delivering to the commissioner a list of inspected and certified nurseries from the "state of origin" in lieu of individual certificates of inspection from each nursery. Each shipment of nursery stock entering the state of Colorado shall be accompanied by a certificate of inspection which states that the nursery stock has the appearance of freedom from insect pests and plant diseases.

(1.5) An out-of-state nursery advertising and selling nursery stock in Colorado and having no duly appointed resident agent in this state upon whom process may be served as provided by law shall be deemed to have appointed the secretary of state as the agent of said nursery upon whom service of process may be had in the event of any suit against said nursery. Service on the secretary of state of any such process shall be made by delivering to and leaving with him or with his deputy, an assistant, or a clerk two copies of such process. The secretary of state shall also require a statement which contains the name and address of the nonresident's home or home office. After receipt of such process the secretary of state shall forward to the defendant a copy of the process by registered mail, return receipt requested. The person so serving the secretary of state shall immediately send or give to the commissioner a notice of such service and a copy of the process. The secretary of state shall collect at the time of any service of process on him as resident agent a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(2) (Deleted by amendment, L. 91, p. 156, § 13, effective July 1, 1991.)

Source: L. 73: p. 198, § 4. C.R.S. 1963: § 6-15-10. L. 83: (1) amended and (1.5) added, p. 1363, § 7, effective July 1. L. 85: (1.5) amended, p. 1365, § 36, effective June 28. L. 91: (1) and (2) amended, p. 156, § 13, effective July 1.

35-26-111. Rules and regulations. The commissioner is hereby authorized and directed to promulgate such rules and regulations as he may deem necessary and proper for the furtherance and enforcement of the provisions of this article. Such rules and regulations shall be promulgated in accordance with applicable provisions of article 4 of title 24, C.R.S.

Source: L. 73: p. 198, § 4. C.R.S. 1963: § 6-15-11.

35-26-112. Delegation of duties. The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

Source: L. 83: Entire section added, p. 1364, § 8, effective July 1. L. 91: Entire section amended, p. 157, § 14, effective July 1.

35-26-113. Bodies politic. (1) All growing fields and all other premises in this state on which nursery stock is being grown or held by bodies politic for the purpose of planting on public or private grounds shall be inspected at least once each year by the commissioner or his authorized agents.

(2) A body politic shall not plant nursery stock infested with insect pests or infected by plant diseases on public or private grounds.

(3) A body politic shall be subject to the inspection fees set forth in section 35-26-106 (3).

Source: L. 83: Entire section added, p. 1364, § 8, effective July 1. L. 91: (1) and (3) amended, p. 157, § 15, effective July 1.

35-26-114. Enforcement. (1) After an investigation, the commissioner may, through the attorney general, institute and prosecute the proper proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the department, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the commissioner or the department.

(2) The commissioner may deny, suspend, or revoke a registration if the applicant or holder thereof does not engage in the sale of nursery stock.

(3) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(4) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey an administrative subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(5) Whenever it appears to the commissioner, upon sufficient evidence satisfactory to the commissioner, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or of any order promulgated under this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order promulgated under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(6) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a registrant.

(7) The commissioner may deny, revoke, or suspend any registration for any of the following:

(a) If the party has violated any provision of this article or any rules promulgated pursuant to this article;

(b) If the party has had a felony conviction related to the conduct regulated by this article;

(c) If there has been fraud or deception in the procurement or attempted procurement of a registration;

(d) If the party has failed to comply with a lawful order of the commissioner;

(e) If the party has knowingly misrepresented information on his application;

(f) If the party has had an equivalent registration or license revoked or suspended by any authority; and

(g) If the party has forged or otherwise falsified a certificate of inspection.

Source: **L. 83:** Entire section added, p. 1364, § 8, effective July 1. **L. 91:** Entire section amended, p. 157, § 16, effective July 1.

35-26-115. Termination of function - repeal of article. (Deleted by amendment)

Source: **L. 88:** Entire section added, p. 933, § 29, effective April 28. **L. 91:** Entire section amended, p. 159, § 17, effective July 1. **L. 96:** Entire section amended, p. 374, § 3, effective April 17.

Editor's note: This section was deleted by amendment in 1996. (See L. 1996, p. 374.)

ARTICLE 27

Colorado Seed Act

Editor's note: This article was numbered as article 8 of chapter 6, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

35-27-101.	Short title.	35-27-115.	Inspections - access - investigations - subpoena.
35-27-102.	Legislative declaration.		Enforcement.
35-27-103.	Definitions.	35-27-116.	Disciplinary actions - denial of registration.
35-27-104.	Scope of article.	35-27-117.	Civil penalties.
35-27-105.	Label requirements.	35-27-118.	Embargo.
35-27-106.	Tolerances.	35-27-119.	Reports - bulletins.
35-27-107.	Sales from bulk lots.	35-27-120.	Advisory committee - repeal.
35-27-108.	Seed shipped into state.	35-27-121.	(Repealed)
35-27-109.	Seed beans - approval.	35-27-122.	Arbitration council - procedures.
35-27-110.	Seed records and samples.	35-27-123.	Requirement and effect of arbitration.
35-27-111.	Registration of custom seed conditioners, farmer seed labelers, retail seed dealers, and seed labelers - form - fees - renewal.	35-27-124.	Seed cash fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.
35-27-112.	Record-keeping requirements.	35-27-125.	Repeal of article - termination of functions.
35-27-113.	Prohibitions.		
35-27-114.	Powers and duties of commissioner.		

35-27-101. Short title. This article shall be known and may be cited as the "Colorado Seed Act".

Source: **L. 93:** Entire article R&RE, p. 1000, § 1, effective July 1.

35-27-102. Legislative declaration. The general assembly hereby finds and declares that truth in the labeling of seed is of paramount importance to the citizens of Colorado because the distribution and subsequent use of poor quality seed caused by inaccurate or misleading labeling of such seed can result in severe economic hardship due to low crop yields, poor crop quality, and the spread of noxious weed seed. It is the intent of the general

assembly in enacting this article to prevent the distribution and use of poor quality seed through the regulation of the labeling, the labelers, and the sellers of seed for propagation in Colorado.

Source: L. 93: Entire article R&RE, p. 1000, § 1, effective July 1.

35-27-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advertisement" means all representations commercial and otherwise, other than labeling, disseminated in any manner or by any means by the seller of seed as such representations relate to such seed.

(2) "Bean" means all species of genus *phaseolus*, *vigna*, and *cicer*.

(3) "Certified seed" means seed certified by a seed certifying agency pursuant to this article and includes foundation and registered seed.

(4) "Certifying agency" means the seed certification service of the Colorado state university authorized by the board of governors of the Colorado state university system or the authorized seed certifying agency of another state.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Conditioning" means drying, cleaning, scarifying, sizing, or any other operation which could change the purity or germination of seed.

(7) "Custom seed conditioner" means any person in Colorado who engages in the business of conditioning seed by either a stationary or portable seed cleaner, if ownership of such seed is retained by the customer.

(8) "Department" means the department of agriculture.

(9) "Disease of beans" means a bacterial, viral, or fungal disease of beans. The term includes any of the following diseases and any variations or new strains of the following diseases which are recognized as pathogenic or a potential threat to seed bean production:

(a) Anthracnose (*collectotrichum lindemuthianum*);

(b) Bean bacterial wilt (*corynebacterium flaccumfaciens* ssp. *flaccumfaciens*);

(c) Strains of brown spot (*pseudomonas syringae* pv. *syringae*);

(d) Common bean blight (*xanthomonas campestris* pv. *phaseoli*);

(e) Halo blight (*pseudomonas syringae* pv. *phaseolicola*); and

(f) BCMV (bean common mosaic virus).

(9.5) "Dormant seeds" means viable seeds, other than hard seeds, that fail to germinate when provided the specific germination conditions for the kind of seed in question.

(10) "Farmer seed labeler" means any person who labels only seed produced for sale on property owned or rented by such person or such person's employer in Colorado.

(11) "Germination" means the emergence and development from the seed embryo of those essential structures that, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(11.5) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(12) "Inert matter" means matter which is not seed, including broken seed, sterile florets, chaff, fungus bodies, and stones, as defined by the commissioner.

(13) "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, including corn, oats, alfalfa, timothy, and western wheatgrass.

(14) "Labeling" means all labels, tags, and other written, printed, or graphic representations, in any form, accompanying and pertaining to specific seed whether in bulk or in containers and includes invoices; except that labeling does not include advertisements as defined in this section.

(15) "Lot" means a definite quantity of seed identified by a lot number or other mark. Every portion or bag of any such lot shall be uniform within recognized tolerances for the factors which appear in the labeling of such lot.

(16) "Noxious weed seed" means the seed produced from plants which are especially troublesome and detrimental and which may cause damage or loss to a considerable portion of the land or livestock of a community. Noxious weed seed are divided into two classes:

“prohibited noxious weed seed” and “restricted noxious weed seed” and are defined as follows:

(a) “Prohibited noxious weed seed” means the seed of perennial, biennial, and annual weeds which are highly detrimental and especially difficult to control. The presence of prohibited noxious weed seed in seed precludes the sale of seed for propagation. Prohibited noxious weed seed includes the seed of any weed so designated by the commissioner.

(b) “Restricted noxious weed seed” means the seed of weeds which are very objectionable in fields, lawns, and gardens but which can be controlled by good cultural practices. Restricted noxious weed seed includes the seed of any weed so designated by the commissioner.

(17) “Origin” means the state or foreign country in which seed is grown.

(18) “Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

(19) “Pesticide” means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, substance, or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term “pesticide” shall not include any substance that is a “new animal drug” as designated by the United States food and drug administration.

(20) “Record” means any information which relates to the origin, treatment, germination, purity, kind, and variety of each lot of seed sold in this state. Such information includes seed samples and documents showing declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(21) “Retail seed dealer” means any person who engages in the business of selling seed at retail in Colorado.

(22) “Screenings” means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seed in any kind of cleaning procedure.

(23) “Seed” means agricultural, vegetable, ornamental, shrub, or tree seed for propagation. The term “seed” does not include tubers that are planted or used, or intended to be planted or used, as seed potatoes and are thus regulated under the “Colorado Seed Potato Act”, article 27.3 of this title.

(24) “Seed labeler” means a person who engages in the business of labeling seed for sale in Colorado and whose name and address appears on the label of such seed.

(25) “Tolerance” means:

(a) For “seed”, the allowable deviation, as prescribed in the rules and regulations adopted pursuant to this article, from any figure used on a label including but not limited to those figures used to designate the percentage of any fraction of the lot in question, the percentage germination, or the number of noxious weed seeds present;

(b) For “bean”, in addition to the requirements of paragraph (a) of this subsection (25), the deviation from minimum levels of seed-borne pathogens and the diseases of beans allowed by the commissioner.

(26) “Treated” means that the seed has received an application of a substance or that it has been subjected to a procedure for which a claim is made.

(27) (a) “Variety” (cultivar) means a division of a kind which is distinct, stable, and uniform.

(b) For purposes of this subsection (27):

(I) “Distinct” means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties publicly known.

(II) “Stable” means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(III) “Uniform” means that variations in essential and distinctive characteristics are describable.

(28) “Weed seed” means the seed of plants detrimental to agriculture and generally recognized as weeds within this state and includes noxious weed seed.

Source: **L. 93:** Entire article R&RE, p. 1000, § 1, effective July 1. **L. 99:** (10) amended, p. 188, § 3, effective March 31. **L. 2002:** (4) amended, p. 1248, § 24, effective August 7. **L. 2007:** (9.5) and (11.5) added and (11) amended, p. 642, § 1, effective April 26. **L. 2010:** (23) amended, (SB 10-072), ch. 384, p. 1792, § 3, effective July 1.

Editor's note: This section is similar to former §§ 35-27-101 and 35-27-102 as they existed prior to 1993.

Cross references: For exceptions to labeling requirements, see §§ 35-27-105 and 35-27-108.

35-27-104. Scope of article. (1) This article does not apply to:

(a) Seed not intended for propagation; except that screenings are subject to the requirements of section 35-27-113 (1) (e);

(b) Seed in storage in or consigned to a seed conditioning establishment for conditioning or for sale outside the state; except that:

(I) Disclosure of information concerning the holding, sale, and transportation of such seed shall be provided:

(A) On the labels attached to such seed; or

(B) Upon request; and

(II) All labeling and advertisements made regarding such seed are subject to this article;

(c) Seed sold or consigned to a merchant, if such seed is to be recleaned before it is sold for propagation; except that the seller or consignor of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(d) Seed of a variety not protected by the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, sold on a grower's premises and delivered to a purchaser, if such seed is: Grown on such grower's premises, not delivered by common carrier or by mail, and not commercially advertised in any way; except that such seed shall be subject to the noxious weed provisions of section 35-27-113 (2), and the grower of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(e) Seed brought into the state by the Colorado agricultural experiment station for experimental purposes or for storage in the USDA-ARS national center for genetic resources preservation;

(f) Any person who produces seed for such person's own use on property owned or rented by such person or such person's employer;

(g) Seed held for wholesale transactions; except that such seed shall be subject to the labeling requirements of section 35-27-105;

(h) Seed potatoes as defined in section 35-27.3-103.

(2) Any person who acts as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state shall be subject to this article.

Source: **L. 93:** Entire article R&RE, p. 1004, § 1, effective July 1. **L. 99:** (1)(d) amended, p. 189, § 4, effective March 31. **L. 2007:** (1)(e) amended, p. 642, § 2, effective April 26. **L. 2010:** IP(1) amended and (1)(h) added, (SB 10-072), ch. 384, p. 1793, § 4, effective July 1.

Cross references: For the "Federal Seed Act", see 7 U.S.C. § 1551 et seq.

35-27-105. Label requirements. (1) (a) Except as otherwise provided in this article, every container of seed which is sold, offered or exposed for sale, bartered, or distributed within this state for propagation shall conspicuously bear a legible and plainly written or printed label or tag in English which shall provide all information required by the commissioner. A label shall not bear false or misleading information.

(b) For purposes of this subsection (1), a lot of seed sold at wholesale or at bulk shall be categorized as a sale in a single container.

(2) All labels made pursuant to this section shall include arbitration information required pursuant to section 35-27-123.

Source: L. 93: Entire article R&RE, p. 1005, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-103 as it existed prior to 1993.

35-27-106. Tolerances. (1) Tolerances shall be recognized between:

- (a) The percentages or rates of occurrence found by analysis, test, or examination; and
- (b) The percentages or rates of occurrence prescribed by the commissioner.
- (2) In prescribing tolerances the commissioner shall use as guides:
 - (a) The tolerances defined in the "Federal Seed Act", 7 U.S.C. secs. 1551 to 1610, as amended; and
 - (b) Rules for testing seed adopted by the association of official seed analysts.

Source: L. 93: Entire article R&RE, p. 1005, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-104 as it existed prior to 1993.

35-27-107. Sales from bulk lots. (1) If seed is sold, offered or exposed for sale, bartered, or distributed in or from a bulk lot, a label required pursuant to section 35-27-105 shall be furnished to each purchaser of such seed; except that such label shall not be required to be furnished for sales otherwise exempted.

(2) No label required pursuant to subsection (1) of this section shall be required for bulk lot seed if such seed is:

- (a) Sold, offered or exposed for sale, bartered, or distributed in a lot of less than five pounds directly to a consumer; and
- (b) Taken from a container in such consumer's presence.

Source: L. 93: Entire article R&RE, p. 1005, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-105 as it existed prior to 1993.

35-27-108. Seed shipped into state. (1) No seed shall be brought into the state unless such seed:

- (a) Has been tested and has passed all such required tests as required by the commissioner pursuant to rule and regulation; and
- (b) Is in a container which meets the labeling requirements of section 35-27-105; and
- (c) Meets all other requirements of this article.

(2) Tests required pursuant to paragraph (a) of subsection (1) of this section shall be developed by the commissioner through rule and regulation.

Source: L. 93: Entire article R&RE, p. 1006, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-106 as it existed prior to 1993.

35-27-109. Seed beans - approval. (1) (a) For seed beans, the commissioner shall establish tolerances of seed-borne pathogens, inspection procedures and standards, and approval procedures for those seed beans which are found to be within allowable tolerances.

(b) The commissioner may designate those areas of the state in which the provisions of this section shall apply.

(2) (a) The commissioner shall establish reasonable fees for inspections performed pursuant to this section.

(b) Fees established pursuant to this subsection (2) shall be:

(I) Sufficient to offset the actual direct and indirect costs incurred by the commissioner in administering the provisions of this section; and

(II) Paid by the person selling, bartering, or distributing seed beans.

(3) The commissioner may, by contractual agreement, retain qualified persons to act as agents of the commissioner for the performance of inspections pursuant to subsection (1) of this section.

Source: L. 93: Entire article R&RE, p. 1006, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-104 as it existed prior to 1993.

35-27-110. Seed records and samples. Each person whose name appears on a label on a seed container as a handler of the seed in such container shall keep complete records as prescribed by the commissioner concerning the origin, sale, shipping, and disposition of such seed and shall keep or arrange to have kept a file sample of such seed for a period of at least two years after final disposition of such seed. All such records and samples shall be accessible for inspection by the commissioner or the commissioner's agent during customary business hours. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-112.

Source: L. 93: Entire article R&RE, p. 1006, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-112 as it existed prior to 1993.

35-27-111. Registration of custom seed conditioners, farmer seed labelers, retail seed dealers, and seed labelers - form - fees - renewal. (1) After January 1, 1994, no person shall act as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state, except as provided in this article, if such person is not registered with the department.

(2) (a) A person may register as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler by submitting information on the form and with the registration fee prescribed by the commissioner.

(b) (I) Each registration completed pursuant to this section shall be effective on the first day of the month following the month it was submitted to the department and shall expire on the last day of the month twelve months from the date it became effective.

(II) Notwithstanding subparagraph (I) of this paragraph (b), registrations renewed between March 1, 2000, and February 1, 2001, shall expire February 28, 2001. Effective March 1, 2001, all registrations shall be effective March 1 of each year and shall expire the last day of February of each year.

(c) A registrant shall report any change in the information provided in such registrant's registration form or in any report submitted to the department pursuant to this article within fifteen days of such change in the manner prescribed by the commissioner.

(3) The following persons shall be exempt from the provisions of subsections (1) and (2) of this section:

(a) Any person registered as a custom seed conditioner, farmer seed labeler, or seed labeler shall not be required to register as a retail seed dealer to sell seed at retail in Colorado;

(b) Any person registered as a seed labeler shall not be required to register as a custom seed conditioner in Colorado;

(c) Any person registered as a farmer seed labeler shall not be required to register as a custom seed conditioner if such person is only cleaning or conditioning such person's own seed; and

(d) Any person acting as a retail seed dealer selling only prepackaged seed in containers of one pound or less shall not be required to register as a retail seed dealer if the seed labeler supplying such prepackaged seed is properly registered.

(4) (a) The commissioner shall establish registration fees; except that registration fees for:

(I) Custom seed conditioners and seed labelers shall not exceed three hundred dollars; and

(II) Farmer seed labelers and retail seed dealers shall not exceed seventy-five dollars.

(b) The commissioner shall establish fees for each additional separate registration location according to the class of registrant; except that the fee for:

(I) Custom seed conditioners and seed labelers shall not exceed seventy-five dollars for each such additional separate location; and

(II) Farmer seed labelers and retail seed dealers shall not exceed twenty-five dollars for each such additional separate location.

(5) (a) Any person registered pursuant to this article may renew such person's registration within one year of its expiration. No registration shall be renewed if it is not renewed within one year of expiration.

(b) A registration may be renewed by a registrant by submitting a completed registration renewal form and the requisite renewal fee before such registrant's current registration expires. Such renewal forms and fees shall be prescribed by the commissioner.

(c) If a registrant does not complete the renewal process in compliance with paragraph (b) of this subsection (5), such registrant shall be required to pay a fee of an amount double the prescribed renewal fee.

(d) No renewal shall be effective until the requisite fee is received by the department.

Source: L. 93: Entire article R&RE, p. 1007, § 1, effective July 1. L. 99: (2)(b) amended, p. 189, § 5, effective March 31.

35-27-112. Record-keeping requirements. Every person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state registered pursuant to this article shall keep and maintain certain records. Records shall be maintained as specified by the commissioner for a period of two years at the registrant's address. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-110.

Source: L. 93: Entire article R&RE, p. 1008, § 1, effective July 1.

35-27-113. Prohibitions. (1) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state, if such seed:

(a) Has not been tested to determine the percentage of germination of such seed within the previous thirteen months, except for certain cool season grasses as determined by the commissioner by rule, if such seed has not been tested within the previous sixteen months, and except that, for seed stored in hermetically sealed containers, if such seed has not been tested within the previous twenty-four months. For labeling purposes, a tetrazolium test may not be used in place of a germination test except as specifically authorized by the commissioner by rule.

(b) Has been treated with a material which is poisonous to humans or livestock unless there is a conspicuous warning in the labeling which gives the commonly accepted or abbreviated chemical name of the poisonous substance;

(c) Is not labeled in accordance with this article;

(d) Is or has been the subject of false or misleading advertisements or statements by the person, or such person's agent, who is selling, exposing or offering for sale, bartering, or distributing such seed;

(e) Is sold in the form of screenings, but is not labeled and invoiced as "screenings for processing, not for seeding";

(f) Is officially labeled or advertised as certified or registered, and if such seed has not been produced, conditioned, and packaged in conformity with the standards of purity as to kind and variety in compliance with the rules and regulations of the certifying agency. For

purposes of this paragraph (f), labeling or advertising guarantees that seed is certified if such labeling or advertising uses the word "certified", "foundation", or "registered" in any manner.

(g) (I) Is sold by a variety name but is not certified by an official seed certifying agency if such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, requires sale only as a class of certified seed.

(II) Notwithstanding subparagraph (I) of this paragraph (g), seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(h) Is sold by a variety name when such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, has been granted or for which an application for a certificate of plant variety protection has been sought.

(2) (a) It is a civil violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state if such seed contains:

(I) More than two percent of weed seed by weight or such other standard established by the commissioner;

(II) Prohibited noxious weed seed; or

(III) (A) More restricted noxious weed seed per pound than the amount declared on the label attached to the container of such seed, if the amount declared meets the standards established by the commissioner; or

(B) More restricted noxious weed seed per pound than the amount allowed by the standards established by the commissioner.

(b) Any person who violates paragraph (a) of this subsection (2) shall be subject to a civil penalty pursuant to section 35-27-118.

(3) It is unlawful and a violation of this article for any person within this state to:

(a) Detach, alter, deface, or destroy any label or tag completed pursuant to section 35-27-105, if such person is not the ultimate consumer;

(b) Alter or substitute seed or other material in a manner that may defeat the purposes of this article;

(c) Disseminate any false or misleading advertisement concerning a specific lot of seed in any manner or by any means;

(d) Intentionally hinder or obstruct in any way any authorized person in the performance of such person's official duties as such duties pertain to this article;

(e) Perform, or hold oneself out as being authorized to perform, any of the acts for which registration is required without registering pursuant to section 35-27-111;

(f) Solicit, advertise, or offer to perform any of the acts for which registration is required without being registered;

(g) Refuse or fail to comply with a cease-and-desist order issued pursuant to section 35-27-116;

(h) Refuse or fail to comply with the provisions of this article;

(i) Make false, misleading, deceptive, or fraudulent advertisements concerning a specific lot of seed;

(j) Impersonate any state, county, city and county, or municipal official or inspector authorized pursuant to this article;

(k) Refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner.

(4) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute, for other than propagation purposes, within the state, any seed that has been treated unless it is sold separately from untreated seed or grain and is accompanied by an affidavit, certificate, label, or tag stating that the seed has been chemically treated and cannot be used for food, feed, or oil purposes.

(5) It is unlawful and a violation of this article for any person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler to:

(a) Make false or misleading representations or statements of fact in any application, record, or report submitted to the department pursuant to this article;

- (b) Fail to maintain or submit any records or reports required by this article;
- (c) Permit the use of a registration by any person other than the registrant.
- (6) A person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., when such person:
 - (a) Sells, offers or exposes for sale, barter, or distributes within the state;
 - (I) Any seed beans which have not been approved in accordance with section 35-27-109;
 - (II) Any seed subject to the provisions of this article if such person fails to comply with or violates the provisions of this article;
- (b) (I) Removes or disposes of any detained or embargoed seed without prior permission from the commissioner or a court of competent jurisdiction or removes or alters any labeling on such seed.
- (II) Any person violating this paragraph (b) may be subject to civil penalties assessed in accordance with section 35-27-118.
- (7) The failure by any person to comply with the provisions of subsection (3) (e), (3) (f), or (3) (i) of this section is a deceptive trade practice and is subject to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.
- (8) It is the duty of the several district attorneys of the state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the attorney general to advise the commissioner in all legal matters and to represent the commissioner or the commissioner's agents in all actions brought by or against the commissioner or the commissioner's agents.

Source: **L. 93:** Entire article R&RE, p. 1008, § 1, effective July 1. **L. 99:** (1)(g) and (1)(h) amended, p. 189, § 6, effective March 31. **L. 2002:** IP(6) amended, p. 1548, § 311, effective October 1. **L. 2007:** (1)(a) and (1)(g) amended, p. 643, § 3, effective April 26.

Editor's note: This section is similar to former § 35-27-107 as it existed prior to 1993.

Cross references: For the legislative declaration contained in the 2002 act amending the introductory portion to subsection (6), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-27-114. Powers and duties of commissioner. (1) In addition to any other duties in this article, the commissioner shall:

- (a) Administer and enforce the provisions of this article;
- (b) Adopt rules and regulations necessary for the administration and enforcement of this article including but not limited to rules and regulations which:
 - (I) Set forth the methods to inspect, sample, analyze, and test seed, including defining the tolerances to be followed during such processes pursuant to section 35-27-106;
 - (II) Amend the lists of prohibited and restricted noxious weed seed;
 - (III) Establish procedures and standards including defining allowable tolerances to be used for the inspection and approval of seed beans that are within allowable tolerances pursuant to section 35-27-109;
 - (IV) Establish standards for the sale of any seed including but not limited to standards for the acceptable content of pathogens, biotic contaminant, insects, plant pests, and endophytes in such seeds;
 - (V) Establish procedures and standards to embargo seed pursuant to section 35-27-119;
 - (VI) Establish procedures for the reinstatement of any registration authorized pursuant to this article;
 - (VII) Enforce any disciplinary actions authorized pursuant to this article including but not limited to letters of admonition or the denial, suspension, or revocation of any registration;
 - (VIII) Establish the amounts of the registration fees pursuant to section 35-27-111;
- (c) Promptly notify any person who transported, sold, bartered, or distributed the seed or offered or exposed the seed for sale which does not test in compliance with the provisions of this article;
- (d) Inspect, sample, analyze, and test seed pursuant to this article.

- (2) In addition to any other powers conferred in this article, the commissioner may:
- (a) Inspect, sample, analyze, and test seed pursuant to paragraph (d) of subsection (1) of this section at such time and place and to such extent as the commissioner deems necessary to determine compliance with this article;
 - (b) Appoint such qualified employees of the department as necessary to carry out the provisions of this article;
 - (c) Cooperate with the United States department of agriculture to enforce federal seed law;
 - (d) (I) Conduct any hearings required by this article pursuant to article 4 of title 24, C.R.S.; or
 - (II) Repealed.
 - (III) Subject to appropriations made to the department, employ administrative law judges on a full- or part-time basis to conduct such hearings;
 - (e) Conduct investigations pursuant to section 35-27-115.
 - (f) Repealed.

Source: L. 93: Entire article R&RE, p. 1011, § 1, effective July 1. L. 2007: (2)(d)(II) and (2)(f) repealed, p. 643, § 4, effective April 26.

Editor's note: This section is similar to former § 35-27-109 as it existed prior to 1993.

35-27-115. Inspections - access - investigations - subpoena. (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make an investigation necessary to determine compliance with this article or to investigate a complaint for arbitration.

(2) (a) For inspection purposes pursuant to subsection (1) of this section, the commissioner shall have free and unimpeded access during regular business hours, either upon consent of the owner or upon obtaining an administrative search warrant, to:

- (I) Enter any building, yard, warehouse, or storage facilities in which seed or any other related material is kept, used, stored, handled, conditioned, disposed of, or transported; and
- (II) Inspect any records required to be kept pursuant to this article.

(b) The commissioner is authorized to make copies of any record inspected pursuant to subparagraph (II) of paragraph (a) of this subsection (2).

(3) (a) The commissioner has full authority to administer oaths, take statements, issue subpoenas to compel the appearance of witnesses before the commissioner, issue subpoenas duces tecum for the production of any books, memoranda, papers, or other documents, articles, or instruments, and compel disclosure by witnesses of all facts known to such witnesses relative to any matter under investigation.

(b) Upon failure or refusal of any person to obey any subpoena issued pursuant to paragraph (a) of this subsection (3), the commissioner may petition the district court to enter an order compelling such person to comply with the subpoena.

(c) Failure to obey an order of the court entered pursuant to paragraph (b) of this subsection (3) is contempt of court.

(4) Complaints of record made to the commissioner and the results of the commissioner's investigations shall be closed to public inspection, except to the person in interest as defined in section 24-72-202 (4), C.R.S., or pursuant to court order, during the investigatory period and until dismissed or notice of hearing and charges are served.

Source: L. 93: Entire article R&RE, p. 1013, § 1, effective July 1. L. 2007: (1) amended, p. 643, § 5, effective April 26.

Editor's note: This section is similar to former § 35-27-109 as it existed prior to 1993.

35-27-116. Enforcement. (1) The commissioner, pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall enforce the provisions of this article. After an investigation, the commissioner may, through the attorney

general, enforce any of the provisions of this article, including recovering any money due the department or any penalty assessed pursuant to this article, and defend any suit or action brought against the commissioner or the department under this article.

(2) (a) If the commissioner has reasonable cause to believe a violation of this article is occurring and determines that immediate action is necessary, the commissioner may issue a cease-and-desist order. Such cease-and-desist order shall be issued to the alleged violator and shall set forth the alleged violation, the facts which constitute such violation, and an order that all such violative conduct immediately cease.

(b) If a person fails to comply with a cease-and-desist order within twenty-four hours after being served with such order, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing has been held at which both parties have had an opportunity to appear.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the calendar of the court.

(3) (a) If the commissioner determines that a person has engaged in or is about to engage in any act or practice violating any provision of this article, any rule or regulation, or any order issued under this article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain such person or enjoin the violative practice.

(b) In any action taken pursuant to paragraph (a) of this subsection (3), the court shall not require the commissioner to:

(I) Plead or prove irreparable injury or inadequacy of a remedy at law; or

(II) Post a bond.

(4) (a) Any lot of seed which is sold, offered or exposed for sale, bartered, or distributed in violation of this article shall be subject to embargo on complaint of the commissioner to a court of competent jurisdiction for the area in which such lot of seed is located.

(b) If the court finds, pursuant to paragraph (a) of this subsection (4), seed to be in violation of this article and orders the embargo and condemnation of such seed, such seed shall be, pursuant to court order, conditioned, denatured, destroyed, relabeled, or otherwise disposed of in a manner consistent with the quality of such seed.

Source: L. 93: Entire article R&RE, p. 1014, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-27-110, 35-27-111, and 35-27-116 as they existed prior to 1993.

35-27-117. Disciplinary actions - denial of registration. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, or revoke any registration authorized under this article if the registrant:

(a) Refuses or fails to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Is convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has a registration or license of equivalent status denied, revoked, or suspended by any registering or licensing authority of any state or foreign country;

(d) Refuses to provide the commissioner with reasonable, complete, and accurate information regarding such person's business, if requested to do so by the commissioner; or

(e) Falsifies any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction, either foreign or domestic, if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) (a) All disciplinary actions taken by the commissioner pursuant to this article shall be deemed final for purposes of judicial review.

(b) Any person aggrieved by any disciplinary action taken by the commissioner shall appeal to the Colorado court of appeals.

(4) No registrant whose registration has been revoked may apply or reapply for registration under this article within two years after the date of such revocation.

Source: L. 93: Entire article R&RE, p. 1015, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-109 as it existed prior to 1993.

35-27-118. Civil penalties. (1) (a) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner.

(b) (I) Before imposing any civil penalty, the commissioner shall consider the severity of the violation, the amount of harm caused by such violation, the presence or absence of a pattern of similar violations by the registrant, the effect of the proposed penalty on the ability of the registrant to continue to conduct business, and any other factors deemed relevant.

(II) The commissioner may request advice from the arbitration council in assessing a fine pursuant to this section.

(c) The maximum penalty imposed by the commissioner shall not exceed two thousand five hundred dollars per violation.

(2) No civil penalty shall be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or a set portion of such civil penalty, the commissioner is authorized to retain the attorney general pursuant to section 35-27-116 to bring suit to recover such penalty. In any action brought pursuant to this section the commissioner shall be entitled to recover costs and reasonable attorney fees.

Source: L. 93: Entire article R&RE, p. 1015, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-27-114 and 35-27-115 as they existed prior to 1993.

35-27-119. Embargo. (1) (a) This section shall apply if the commissioner finds or has reasonable cause to believe that any seed is:

(I) (A) Adulterated or misbranded; or

(B) Not labeled pursuant to this article; and

(II) (A) In violation of any provision of this article or any rule or regulation adopted pursuant to this article;

(B) From an unregistered seed labeler;

(C) For sale or has been sold by an unregistered retail seed dealer; or

(D) Has been distributed by an unregistered custom seed conditioner.

(b) The commissioner shall conduct an investigation to determine if a violation of paragraph (a) of this subsection (1) has occurred.

(2) If paragraph (a) of subsection (1) of this section applies, the commissioner shall affix to the seed in question labeling to give notice that:

(a) The seed violates this article; and

(b) The seed is embargoed; and

(c) No person may remove or dispose of such seed by sale or otherwise until permission for removal or disposal is given by the commissioner or a court of competent jurisdiction.

(3) If the commissioner determines that embargoed seed is not adulterated or mislabeled, the commissioner shall remove the labeling attached pursuant to subsection (2) of this section.

(4) The owner of seed embargoed under this section may correct any violation found by the commissioner within thirty days after the embargo of such seed. If the violation is not corrected within thirty days, the commissioner may petition a court of competent jurisdiction to condemn such seed.

(5) (a) If a court finds that embargoed seed is in violation of this article, such seed shall, after entry of such court's decree, be destroyed at the expense of the owner, claimant, or custodian thereof, under the supervision of the commissioner, and all court costs, attorney fees, storage fees, and other reasonable and proper expenses shall be assessed against the owner, claimant, or custodian of such seed.

(b) If adulteration or mislabeling of embargoed seed may be corrected by proper conditioning or labeling, the court, after entry of such court's decree and if costs, attorney fees, storage fees, and expenses are paid and a good and sufficient bond is secured by the owner, claimant, or custodian of such seed, may order that such seed be delivered to the owner, claimant, or custodian for corrective labeling or conditioning. Any such corrective labeling or conditioning shall be conducted under the supervision of the commissioner. The expense of such supervision shall be paid by such owner, claimant, or custodian. The seed shall be returned to its owner, claimant, or custodian when the seed no longer violates this article and the expenses of such supervision have been paid. The commissioner shall inform the court of compliance by the owner, claimant, or custodian of the seed.

Source: L. 93: Entire article R&RE, p. 1016, § 1, effective July 1.

35-27-120. Reports - bulletins. Except as provided for in section 35-27-115 (4), the commissioner may publish bulletins or press reports setting forth results of any examination, analysis, or test conducted pursuant to this article. Bulletins may include the names of persons who have had seed lots examined, analyzed, or tested. The commissioner may also publish bulletins or press reports which set forth information on seed. Any such report or publications intended for circulation outside the executive branch shall be published and circulated in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 93: Entire article R&RE, p. 1017, § 1, effective July 1.

Editor's note: This section is similar to former § 35-27-113 as it existed prior to 1993.

35-27-121. Advisory committee - repeal. (Repealed)

Source: L. 93: Entire article R&RE, p. 1018, § 1, effective July 1. **L. 99:** Entire section repealed, p. 190, § 7, effective March 31.

35-27-122. Arbitration council - procedures. (1) (a) The commissioner shall appoint an arbitration council for each case composed of three members. The following shall each recommend one member:

- (I) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)
- (II) The dean of the college of agriculture, Colorado state university;
- (III) The president of the Colorado seedsmen's association; and
- (IV) The president of any organization of farmers in the state as the commissioner determines to be appropriate.
- (V) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)
- (b) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)
- (c) The council shall elect a chair from its membership. The chair shall conduct the deliberations of the council and shall direct all of its other activities. The commissioner shall serve as staff to the council and shall keep accurate records of all such deliberations and shall perform such other duties for the council as the chair directs.
- (d) The council shall conduct the arbitration for the case.

(2) (a) A buyer of seed shall request arbitration by filing a verified complaint with the commissioner together with a filing fee of ten dollars; except that the commissioner by rule

or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. The commissioner shall serve a copy of the complaint upon the seller of such seed by certified mail or personal service.

(b) Within five working days after receipt of a copy of the complaint, the seller shall file a verified answer to the complaint with the commissioner, who shall serve a copy of the answer upon the buyer by certified mail.

(c) The commissioner shall investigate the allegations in the complaint. In conducting such investigation, the commissioner may employ the services of any expert that he or she deems appropriate. Upon completion of the investigation, the commissioner shall refer the complaint to the council along with a report of the results of the investigation.

(d) Upon referral of a complaint for investigation, the council shall conduct an arbitration hearing in accordance with the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., and shall report its findings and recommendations to the commissioner in an arbitration report. Such arbitration report shall be filed with the commissioner within sixty days after the conclusion of the arbitration hearing or a later date if the parties agree.

(e) The arbitration report of the council shall include findings of fact, conclusions of law, and recommendations as to costs, if any, including but not limited to costs of any investigation conducted by the commissioner.

(f) In the course of his or her investigation, the commissioner may:

(I) Examine the buyer, the seller, and any other person who may have relevant information;

(II) Grow a representative sample of the seed through the facilities of Colorado state university to production; and

(III) Conduct any other investigative activities that he or she deems necessary to obtain information relevant to the allegations in the complaint pursuant to his or her authority in section 35-27-115.

(g) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)

(h) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for actual and necessary expenses.

(i) After the council has filed its arbitration report with the commissioner, the commissioner shall promptly transmit such arbitration report by certified mail to all parties.

Source: L. 93: Entire article R&RE, p. 1018, § 1, effective July 1. L. 98: (2)(a) amended, p. 1342, § 66, effective June 1. L. 2007: IP(1)(a), (1)(a)(I), (1)(a)(V), (1)(b), (1)(c), (1)(d), and (2) amended, p. 643, § 6, effective April 26.

35-27-123. Requirement and effect of arbitration. (1) (a) If a buyer of seed suffers damage because such seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seller, the buyer shall submit such buyer's claim to arbitration pursuant to this section and section 35-27-122. Such submittal shall be a prerequisite to such buyer's right to maintain any legal action against the seller of such seed. Any statute of limitations shall be tolled until ten days after the filing of the arbitration report.

(b) No claim may be asserted as a counterclaim or defense in any action brought pursuant to paragraph (a) of this subsection (1) by a seller against a buyer, if the buyer has not submitted such claim to arbitration. After the buyer files a written notice of intention to assert a claim as a counterclaim or defense in such action, accompanied by a copy of the buyer's complaint filed under section 35-27-122 (2) (a), the statute of limitations shall be tolled for such claim until ten days after the filing of the arbitration report pursuant to section 35-27-122 (2) (d).

(2) (a) Every label required pursuant to section 35-27-105 shall include clear language that arbitration is required for claims arising out of the sale of seed; except that arbitration shall not be required if the notice required pursuant to this paragraph (a) is not included.

(b) A notice in the following form or equivalent language shall be sufficient to comply with paragraph (a) of this subsection (2):

NOTICE OF REQUIRED ARBITRATION

UNDER THE "COLORADO SEED ACT", ARTICLE 27 OF TITLE 35, COLORADO REVISED STATUTES, ARBITRATION IS REQUIRED AS A PREREQUISITE TO CERTAIN LEGAL ACTIONS, COUNTERCLAIMS, OR DEFENSES AGAINST A SELLER OF SEED. INFORMATION ABOUT THIS REQUIREMENT MAY BE OBTAINED FROM THE COLORADO COMMISSIONER OF AGRICULTURE.

(3) (a) An arbitration report filed pursuant to section 35-27-122 (2) (d) shall be binding upon all parties to the extent agreed upon in any contract governing the sale which was the subject of the arbitration.

(b) In the absence of an agreement to be bound by arbitration, a buyer may bring legal action against a seller or assert such claim as a counterclaim or defense in any action brought by the seller at any time after the arbitration report has been filed.

(c) During litigation involving a complaint which has been arbitrated pursuant to this section, any party who was subject to such arbitration may introduce the arbitration report as evidence of the facts found in the report if the party against whom the report is offered was also subject to the arbitration. The court may give such weight to the council's findings and conclusions of law and recommendations as to damages and costs as the court sees fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council of any failure of any party to cooperate in such arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim or answer upon the ability of the arbitration council to determine the facts of the case.

Source: L. 93: Entire article R&RE, p. 1020, § 1, effective July 1.

35-27-124. Seed cash fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. The fees and fines imposed by this article shall supplement any general fund appropriation appropriated for the purposes of this article. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the seed cash fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

Source: L. 93: Entire article R&RE, p. 1021, § 1, effective July 1. L. 2009: Entire section amended, (HB 09-1249), ch. 87, p. 319, § 13, effective July 1.

35-27-125. Repeal of article - termination of functions. This article is repealed, effective July 1, 2020. Prior to such repeal, the registration functions of the commissioner of agriculture shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 93: Entire article R&RE, p. 1021, § 1, effective July 1. L. 99: Entire section amended, p. 190, § 8, effective March 31. L. 2009: Entire section amended, (SB 09-116), ch. 62, p. 220, § 1, effective July 1.

Editor's note: This section was originally numbered as 35-27-127 in Senate Bill 93-017 but has been renumbered on revision for ease of location.

ARTICLE 27.3

Colorado Seed Potato Act

35-27.3-101.	Short title.	35-27.3-107.	Advisory committee - created - members - terms - duties - sunset review - repeal.
35-27.3-102.	Legislative declaration.	35-27.3-108.	Powers and duties of the commissioner - rules.
35-27.3-103.	Definitions.	35-27.3-109.	Inspections - access - investi- gations - subpoenas.
35-27.3-104.	Distribution of seed potatoes - rules.	35-27.3-110.	Violations - civil penalties.
35-27.3-105.	Minimum standards for plant- ing seed potatoes - scope - qualified seed potatoes - rules.	35-27.3-111.	Seed potato cash fund - cre- ated.
35-27.3-106.	Record-keeping requirements - annual record reviews.	35-27.3-112.	Repeal of article - termination of functions.

35-27.3-101. Short title. This article shall be known and may be cited as the “Colorado Seed Potato Act”.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1793, § 5, effective July 1.

35-27.3-102. Legislative declaration. The general assembly hereby finds and declares that the purpose of this article is to control and minimize the spread of contagious community diseases by reducing the overall inoculum pool present in potato crops. This article is further intended to comply with seed potato standards set forth in the state national harmonization program.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1793, § 5, effective July 1.

35-27.3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Advisory committee” means the seed potato advisory committee created in section 35-27.3-107.

(2) “Certified” means certified by a certifying authority as meeting all applicable laws and rules for certification of seed potatoes.

(3) “Certifying authority” means the potato certification service of Colorado state university or the authorized seed potato certifying agency of another state, territory, or country.

(4) “Commissioner” means the commissioner of agriculture.

(5) “Community disease” means a disease or pest that can move from field to field during the potato growing season and is not confined to any single potato grower’s operation. The term includes late blight and potato virus Y.

(6) “Cultivar” means unique variety.

(7) “Department” means the department of agriculture.

(8) “Distribute” means to offer for sale, sell, barter, deliver, supply, furnish, or otherwise provide seed potatoes.

(9) “Generation” means one full seasonal growth cycle, including planting, growing, harvesting, and storing.

(10) “Hundredweight” means a unit of weight equal to one hundred pounds.

(11) “Official control”, with respect to a crop of potatoes, means that the seed potatoes used to produce the crop have been derived from certified seed, qualified seed, or tested, documented sources and found to be within the legal limits for all diseases and pests of concern.

(12) “Parent” means one prior generation removed.

(13) “Person” means any individual, partnership, association, corporation, agency, or organized group of persons.

(14) "Progeny" means the offspring or daughter tubers of a potato plant.

(15) "Qualified", with respect to seed potatoes, means that the seed potatoes are derived from certified seed potatoes, have been inspected by a certifying authority and meet all applicable laws and rules for seed potato certification including official disease control standards, and are thus eligible for planting as seed.

(16) "Quarantine" means a quarantine imposed by the commissioner pursuant to section 35-4-110.

(17) "Seed potatoes" means vegetatively propagated tubers used or intended to be used for potato production.

(18) "State national harmonization program" means the state national harmonization program for seed potatoes developed by the plant protection and quarantine program of the animal and plant health inspection service in the United States department of agriculture.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1793, § 5, effective July 1.

35-27.3-104. Distribution of seed potatoes - rules. (1) All seed potatoes distributed by any person in lots that are sufficient to plant one or more acres in Colorado as determined by the commissioner by rule shall be certified by a certifying authority.

(2) All lots of seed potatoes subject to subsection (1) of this section shall, at the time of distribution, be accompanied by the following documents:

- (a) An official tag or bulk certificate indicating their status as certified seed potatoes;
- (b) A certificate of shipping point inspection;
- (c) A North American plant health certificate issued by the certifying authority for seed potatoes imported from outside Colorado; and

(d) Any other documentation necessary to provide the information required by subsection (3) of this section.

(3) The documents described in subsection (2) of this section shall provide the following:

- (a) A description of the grade of the seed potatoes;
- (b) The findings of field inspections and postharvest inspections conducted on each lot of seed potatoes, including the name and amount of any diseases observed;
- (c) The generation of seed potatoes; and
- (d) Evidence that the seed potatoes were tagged, and, if imported from outside Colorado, packed and sealed, under the certification standards of the state, territory, or country in which they were grown.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1794, § 5, effective July 1.

35-27.3-105. Minimum standards for planting seed potatoes - scope - qualified seed potatoes - rules. (1) (a) Except as otherwise permitted under this section, no seed potatoes in lots that are sufficient to plant one or more acres as determined by the commissioner by rule shall be planted unless the potatoes have been certified.

(b) Seed potatoes imported to Colorado shall meet the minimum standards for certified seed set forth in the state national harmonization program and in any active applicable quarantine.

(2) (a) A potato grower in Colorado shall be allowed to plant uncertified potatoes if:

- (I) The potatoes were grown and stored as part of that grower's farming operations; and
- (II) The uncertified potatoes are no more than one generation from certified parent potatoes or qualified parent potatoes.

(b) A potato grower who plants uncertified potatoes pursuant to paragraph (a) of this subsection (2) may plant progeny from that seed in additional years if, in each additional year, the grower submits the seed stock to the certifying authority of Colorado for testing and the certifying authority of Colorado approves the seed stock for planting. The certifying

authority of Colorado shall approve the seed stock if it meets the standards for such stock as established by the commissioner by rule.

(3) In any year that the commissioner, after consulting with the advisory committee, determines that there is an insufficient volume of any cultivar of certified seed potatoes and seed potatoes meeting the requirements of subsection (2) of this section, potato growers may apply to the advisory committee for permission to plant uncertified seed potatoes. Upon recommendation from the advisory committee, the commissioner may grant applying growers permission to plant uncertified Colorado-grown seed potatoes. Any such permission shall be valid for only that growing season. In no event shall any seed potatoes be planted when bacterial ring rot, late blight, or an unacceptable level of community diseases is present in the seed potatoes.

(4) Prior to January 1, 2012, a Colorado potato grower may plant uncertified and untested seed potatoes if the seed potatoes have been grown as part of that grower's farming operations.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1795, § 5, effective July 1.

35-27.3-106. Record-keeping requirements - annual record reviews. (1) Each person growing potatoes in this state in lots of one acre or greater shall keep and maintain records, by cultivar and by field, of the hundredweight of potato cultivar or cultivars planted per field. The records shall contain the information required for an independent records review conducted pursuant to paragraph (b) of subsection (2) of this section. Growers shall maintain the records for a period of at least two years at the grower's business address.

(2) (a) The commissioner shall, upon recommendation from the advisory committee, select a qualified department employee or independent auditor to perform a records review on at least ten percent of potato growers subject to this article once every seed potato crop cycle. The commissioner shall determine a method for the annual random selection of growers. The area committee for area no. 2, established in the marketing order regulating the handling of potatoes grown in the state of Colorado, as amended, issued pursuant to the "Colorado Agricultural Marketing Act of 1939", article 28 of this title, shall pay the actual costs of such records reviews.

(b) A records review performed pursuant to this section shall verify records that trace back the grower's potatoes, including records that evidence the following:

(I) Acreage planted by cultivar; and

(II) Hundredweight and source of the seed used to plant the acreage, with verifiable documents related to:

(A) For seed potatoes purchased, the documents described in section 35-27.3-104 (2) and (3); or

(B) For seed potatoes planted pursuant to section 35-27.3-105 (2), the testing history and seed potatoes used to replant the grower's own operations.

(3) If the independent auditor who conducted the records review believes a violation of this section has occurred, he or she shall notify the commissioner. The commissioner shall then investigate the alleged violation according to section 35-27.3-109.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1796, § 5, effective July 1.

35-27.3-107. Advisory committee - created - members - terms - duties - sunset review - repeal. (1) (a) There is hereby created the seed potato advisory committee.

(b) (I) The advisory committee shall consist of nine members appointed by the commissioner as follows:

(A) Four potato growers who do not grow seed potatoes and whose operations are located in area no. 2, established in the marketing order regulating the handling of potatoes grown in the state of Colorado, as amended, issued pursuant to the "Colorado Agricultural Marketing Act of 1939", article 28 of this title;

(B) One potato grower who does not grow seed potatoes and whose operation is located in area no. 3, established in the marketing order regulating the handling of potatoes grown in the state of Colorado, as amended, issued pursuant to the "Colorado Agricultural Marketing Act of 1939", article 28 of this title;

(C) Two members of the Colorado certified potato growers' association, or its successor organization, one of whom shall be the sitting president of that association;

(D) One person employed by Colorado state university; and

(E) One person employed by the department.

(II) Whenever possible, the advisory committee members appointed under sub-subparagraphs (D) and (E) of subparagraph (I) of this paragraph (b) shall have knowledge of or experience with seed potatoes.

(2) (a) Except as provided in paragraphs (b) and (c) of this subsection (2), members appointed to the advisory committee shall serve for terms of three years. Members may be appointed for an unlimited number of terms; except that no member shall serve more than two terms consecutively.

(b) The initial appointments of two of the advisory committee members described in sub-subparagraph (A) of subparagraph (I) of paragraph (b) of subsection (1) of this section, one of the members described in sub-subparagraph (C) of subparagraph (I) of paragraph (b) of subsection (1) of this section, and the member described in sub-subparagraph (E) of subparagraph (I) of paragraph (b) of subsection (1) of this section, shall be for two years. Thereafter, each appointment to the advisory committee shall be for a term of three years.

(c) In the event of a vacancy on the advisory committee prior to the completion of a member's full term, the commissioner shall appoint a person to complete the remainder of that term. The person so appointed shall represent the same group as the member he or she is replacing, as set forth in paragraph (b) of subsection (1) of this section.

(3) The members shall receive no compensation or reimbursement from the state of Colorado or the department for any expenses incurred in the exercise of their duties.

(4) The advisory committee shall advise the commissioner in establishing rules under this article, assist in the determination of availability of potatoes, recommend whether to grant permission to plant uncertified seed potatoes, recommend independent auditors to perform records reviews pursuant to section 35-27.3-106 (2), and consult with the commissioner regarding the administration and enforcement of this article.

(5) (a) This section is repealed, effective September 1, 2019.

(b) Prior to said repeal, the advisory committee appointed pursuant to this section shall be reviewed pursuant to section 2-3-1203, C.R.S.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1797, § 5, effective July 1.

35-27.3-108. Powers and duties of the commissioner - rules. (1) In addition to any other duties in this article, the commissioner shall:

(a) Administer and enforce this article;

(b) Adopt rules necessary for the administration and enforcement of this article, including rules that:

(I) Establish requirements for compliance verification, testing, sampling, and inspection;

(II) Specify quality or disease standards for potatoes;

(III) Allow for the random selection of ten percent of potato growers subject to the annual records review required under section 35-27.3-106 (2);

(IV) Set standards for uncertified seed potato stock that may be planted pursuant to section 35-27.3-105 (2) (b);

(V) Establish methods for determining that bacterial ring rot or an unacceptable level of community diseases is not present in seed potatoes planted under section 35-27.3-105 (3);

(VI) Designate the type of records that must be kept by growers; and

(VII) Set a schedule of fees for services performed by the department, which fees shall be billed on a pro rata basis to the area committees for areas no. 2 and no. 3, established

in the marketing order regulating the handling of potatoes grown in the state of Colorado, as amended, issued pursuant to the "Colorado Agricultural Marketing Act of 1939", article 28 of this title.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1798, § 5, effective July 1.

35-27.3-109. Inspections - access - investigations - subpoenas. (1) The commissioner, upon the commissioner's own motion or upon the recommendation of an independent auditor pursuant to section 35-27.3-106 (2), may make an investigation necessary to determine compliance with this article.

(2) (a) For inspection purposes pursuant to subsection (1) of this section, the commissioner shall have free and unimpeded access during regular business hours, either upon consent of the owner or upon obtaining an administrative search warrant, to inspect any records required to be kept pursuant to this article.

(b) The commissioner may make copies of any records inspected pursuant to paragraph (a) of this subsection (2).

(3) (a) The commissioner has full authority to administer oaths; take statements; issue subpoenas to compel the appearance of witnesses before the commissioner; issue subpoenas for the production of any books, memoranda, papers, or other documents, articles, or instruments; and compel disclosure by witnesses of all facts known to such witnesses relative to any matter under investigation.

(b) Upon failure or refusal of any person to obey a subpoena issued pursuant to paragraph (a) of this subsection (3), the commissioner may petition the district court to enter an order compelling such person to comply with the subpoena.

(c) Failure to obey an order of the court entered pursuant to paragraph (b) of this subsection (3) may be punishable as contempt of court.

(4) Complaints of record made to the commissioner and the results of the commissioner's investigations shall be closed to public inspection, except to the person in interest as defined in section 24-72-202 (4), C.R.S., or pursuant to court order, during the investigatory period and until dismissed or notice of hearing and charges are served.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1799, § 5, effective July 1.

35-27.3-110. Violations - civil penalties. (1) (a) Except as otherwise provided in this section, the commissioner may impose a civil penalty on any person who violates any provision of this article or any rule adopted under this article. Such penalty shall not exceed two thousand five hundred dollars per violation.

(b) Any person who plants or distributes potatoes in violation of this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The penalty imposed by the commissioner shall be at least twenty dollars per acre but shall not exceed one hundred dollars per acre per violation.

(c) Any person who fails to maintain complete and accurate records pursuant to section 35-27.3-106 or rules promulgated pursuant to section 35-27.3-108 (1) (b) (VII) is subject to a civil penalty of at least five hundred dollars but no more than one thousand dollars, as determined by the commissioner.

(2) No civil penalty shall be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or a set portion of such civil penalty, the commissioner may bring suit in any court of competent jurisdiction to recover the penalty plus costs and attorney fees.

(4) Moneys collected from any civil penalty imposed under this article shall be paid to the state treasurer, who shall credit the same to the seed potato cash fund created in section 35-27.3-111.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1799, § 5, effective July 1.

35-27.3-111. Seed potato cash fund - created. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the seed potato cash fund, which fund is hereby created. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall remain in the fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. In addition to any appropriation from the general fund, the general assembly shall make annual appropriations from the seed potato cash fund to the department to carry out the purposes of this article.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1800, § 5, effective July 1.

35-27.3-112. Repeal of article - termination of functions. This article is repealed, effective September 1, 2019. Prior to such repeal, the certification functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2010: Entire article added, (SB 10-072), ch. 384, p. 1800, § 5, effective July 1.

ARTICLE 27.5

Forage Crop Certification

35-27.5-101.	Short title.	35-27.5-106.	Inspections.
35-27.5-102.	Definitions.	35-27.5-107.	Penalties.
35-27.5-103.	Rules and regulations.	35-27.5-108.	Colorado weed free crop certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.
35-27.5-104.	Delegation of duties - cooperative agreements.		
35-27.5-105.	Administration and enforcement.		

35-27.5-101. Short title. This article shall be known and may be cited as the “Weed Free Forage Crop Certification Act”.

Source: L. 93: Entire article added, p. 2035, § 1, effective June 9.

- 35-27.5-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Authorized inspector” means a person qualified to identify noxious weeds according to standards adopted by the commissioner pursuant to section 35-27.5-103.
 - (2) Repealed.
 - (3) “Commissioner” means the commissioner of agriculture.
 - (4) “Crop” means any agricultural forage crop product whether cultivated or not cultivated, irrigated or nonirrigated, planted or naturally occurring.
 - (5) “Department” means the department of agriculture.
 - (6) “Noxious weeds” means those weeds, including any weed seed or propagative plant parts, designated by the commissioner as noxious and which are prohibited pursuant to section 35-27.5-103.
 - (7) “Person” means any association, corporation, firm, individual or combination of individuals, partnership, or society.
 - (8) “Qualified employee” means an employee of the department designated as qualified who is trained to identify noxious weeds in accordance with standards adopted by the commissioner pursuant to section 35-27.5-103.
 - (9) “Weed free” means any crop certified as free of noxious weeds by the commissioner pursuant to this article.

(10) “Weed free certification” means crops inspected and certified as free of noxious weeds by the commissioner pursuant to this article.

Source: L. 93: Entire article added, p. 2035, § 1, effective June 9. **L. 94:** (2) repealed, p. 1645, § 76, effective May 31.

35-27.5-103. Rules and regulations. (1) The commissioner shall adopt reasonable and necessary rules and regulations to carry out the provisions of this article in compliance with section 24-4-103, C.R.S., and subject to the requirements of section 35-27.5-107.

(2) Rules and regulations adopted pursuant to subsection (1) of this section shall include but shall not be limited to rules and regulations concerning the following:

- (a) Designation of weeds as noxious and prohibited;
- (b) Procedures for certification of weed free crops;
- (c) Qualification standards for persons seeking designation as authorized inspectors or as qualified employees;
- (d) Crop inspection procedures;
- (e) Treatment procedures for the eradication of viable noxious weeds from crops; and
- (f) Procedures for identifying and tracking certified weed free crops.

Source: L. 93: Entire article added, p. 2036, § 1, effective June 9.

35-27.5-104. Delegation of duties - cooperative agreements. (1) (a) The commissioner may delegate any powers vested in the commissioner pursuant to this article to qualified employees of the department who are designated as qualified employees pursuant to standards adopted in accordance with section 35-27.5-103.

(b) The commissioner may delegate any powers vested in the commissioner pursuant to this article that are related to the duties of authorized inspectors to persons who are designated as authorized inspectors pursuant to standards adopted in accordance with section 35-27.5-103.

(2) The commissioner may enter into cooperative agreements with Colorado state university for the purpose of training authorized employees and qualified inspectors in the identification of those plants designated as noxious weeds by the commissioner pursuant to section 35-27.5-103.

(3) For purposes of carrying out the provisions of this article and subject to any other law of this state, the commissioner may accept grants-in-aid from any agency of the federal government and may cooperate and enter into agreements with any federal agency, any agency of any other state, and any agency of this state or its political subdivisions.

Source: L. 93: Entire article added, p. 2036, § 1, effective June 9.

35-27.5-105. Administration and enforcement. (1) The commissioner shall administer and enforce the provisions of this article.

(2) Upon the motion of the commissioner or upon the motion of any other person, the commissioner may make any investigations necessary to ensure compliance with or determine whether there has been a violation of this article.

(3) The commissioner shall have reasonable access during regular business hours to all pertinent documents concerning any person who has requested that a crop be inspected for purposes of certification of such crop or who has had a crop certified as weed free.

(4) (a) The commissioner may, after notice and a hearing in compliance with the provisions of article 4 of title 24, C.R.S., resulting in a finding of a violation of this article or any rule or regulation promulgated pursuant to this article, rescind any weed free certification of a crop.

(b) For purposes of paragraph (a) of this subsection (4), any action taken by the commissioner following a hearing shall be deemed final.

(c) A person aggrieved by a final decision made by the commissioner pursuant to this subsection (4) may appeal such decision to the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S.

(d) The commissioner may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings.

Source: L. 93: Entire article added, p. 2037, § 1, effective June 9.

35-27.5-106. Inspections. (1) Any crop for which weed free certification is sought shall be inspected in the field of origin and such inspection shall include an inspection of any ditches, fence rows, roads, easements, rights-of-way, and buffer zones, as applicable, surrounding such field of origin.

(2) Crops which contain any weeds which have been designated as noxious pursuant to section 35-27.5-103, may be certified if certain conditions established pursuant to section 35-27.5-103 are met.

Source: L. 93: Entire article added, p. 2038, § 1, effective June 9.

35-27.5-107. Penalties. Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to section 35-27.5-103 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 93: Entire article added, p. 2038, § 1, effective June 9. L. 2002: Entire section amended, p. 1548, § 312, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-27.5-108. Colorado weed free crop certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) The commissioner shall set fees for the certification of weed free crops pursuant to this article in amounts adequate to cover all costs, direct and indirect, of the department in the administration and enforcement of this article.

(2) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit such fees to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the Colorado weed free crop certification fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

Source: L. 93: Entire article added, p. 2038, § 1, effective June 9. L. 2009: (2) amended, (HB 09-1249), ch. 87, p. 319, § 14, effective July 1.

MARKETING AND SALES

ARTICLE 28

Marketing Act of 1939

35-28-101.	Short title.	35-28-108.	Contents of marketing order.
35-28-102.	Legislative declaration.	35-28-109.	When marketing order effective.
35-28-103.	Purposes of article.	35-28-110.	Orders regulating processing.
35-28-104.	Definitions.	35-28-111.	Termination of marketing order.
35-28-105.	Administration of article.	35-28-112.	Notice of issuance.
35-28-106.	Marketing order issued - when.	35-28-113.	Budgeting and collection of
35-28-107.	Board of control.		

	fees.	35-28-119.	Records - information - hearings.
35-28-113.5.	Refunds of assessments - request by producer.	35-28-120.	Deposit to defray expenses.
35-28-114.	Disposition of funds.	35-28-121.	General provisions.
35-28-115.	Limitation of marketing orders.	35-28-122.	Application of article.
35-28-116.	Administration and enforcement.	35-28-123.	Other laws superseded.
35-28-117.	Assessment a personal debt.	35-28-124.	Agricultural commodities - preferences - promotion - task force - legislative declaration - repeal. (Repealed)
35-28-118.	No personal liability.		

35-28-101. Short title. This article shall be known and may be cited as the "Colorado Agricultural Marketing Act of 1939".

Source: L. 39: p. 193, § 1. CSA: C. 106, § 46. CRS 53: § 7-3-1. C.R.S. 1963: § 7-3-1.

ANNOTATION

Marketing Act of 1939 is not unconstitutional on its face. Swisher v. Brown, 157 Colo. 378, 402 P.2d 621 (1965).

35-28-102. Legislative declaration. (1) It is declared that the marketing of agricultural commodities in Colorado, in excess of reasonable and normal market demand thereof; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of agricultural commodities; unfair methods of competition in the marketing of such commodities; and the inability of individual producers to develop new and larger markets for Colorado grown agricultural commodities, result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate food supplies for the people of this and other states, and prevent agricultural producers from obtaining a fair return from their labor, their farms, and the agricultural commodities which they produce. As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations. Colorado agricultural producers are thereby prevented from maintaining a proper standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this state.

(2) These conditions vitally concern the health, peace, safety, and general welfare of the people of this state. It is declared to be the policy of this state to aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities, to develop more efficient and equitable methods in the marketing of agricultural commodities, and to aid agricultural producers in restoring and maintaining their purchasing power at a more adequate, equitable, and reasonable level.

(3) The marketing of agricultural commodities is declared to be affected with a public interest. The provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

Source: L. 39: p. 193, § 2. CSA: C. 106, § 47. CRS 53: § 7-3-2. L. 55: p. 146, § 1. C.R.S. 1963: § 7-3-2. L. 69: p. 111, § 1.

ANNOTATION

Statutes regulating agriculture may be adopted as exercise of police power. *Swisher v. Brown*, 157 Colo. 378, 402 P.2d 621 (1965).

35-28-103. Purposes of article. (1) The purposes of this article are:

- (a) To enable agricultural producers of this state, with the aid of the state, more effectively to correlate the marketing of their agricultural commodities with market demands therefor;
- (b) To establish orderly marketing of agricultural commodities;
- (c) To provide for uniform grading and proper preparation of agricultural commodities for market;
- (d) To provide methods and means for the development of new and larger markets for agricultural commodities produced in Colorado;
- (e) To eliminate or reduce unfair competition and economic waste in the marketing of agricultural commodities;
- (f) To restore and maintain adequate purchasing power for the agricultural producers of this state.

Source: L. 39: p. 194, § 3. CSA: C. 106, § 48. CRS 53: § 7-3-3. L. 55: p. 147, § 2. C.R.S. 1963: § 7-3-3. L. 69: p. 112, § 2.

ANNOTATION

Applied in *Swisher v. Brown*, 157 Colo. 378, 402 P.2d 621 (1965).

35-28-104. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Agricultural commodity" means any agricultural, horticultural, floricultural, viticultural, and vegetable products, livestock and livestock products, wheat, hay, corn, bees and honey, poultry and poultry products, and milk and milk products, either in their natural state or as processed, including any marketable agricultural product, but does not include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice milo, and other feed grains. These exceptions shall be the sole exemptions, irrespective of any other exemptions provided by law, and particularly as set forth in section 35-28-122.

(b) Nothing in paragraph (a) of this subsection (1), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(2) "Commissioner" means the commissioner of agriculture or his duly authorized representative.

(3) "Distributor" means any person engaged in the operation of selling, offering for sale, marketing, or distributing an agricultural commodity which he has produced, purchased, or acquired from a producer, handler, or other distributor, or which he is marketing in behalf of a producer, handler, or other distributor, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as defined in this section except a retailer who purchases or acquires from, or handles on behalf of any producer, handler, or other distributor an agricultural commodity not theretofore subject to regulation by the marketing order covering such commodity.

(4) "Grade" means the official United States or Colorado terminology applied to agricultural commodities as determined by the presence or absence of certain quality and other factors.

(5) "Handler" means any person engaged in the operation of purchasing, packing, grading, selling, offering for sale, or marketing any marketable agricultural product; or any person who, as the producer, owner, agent, or otherwise, ships or causes an agricultural product to be shipped; or any governmental entity that obtains from a producer any interest in an agricultural commodity covered by a marketing agreement or order in connection with

a governmental agricultural commodity program. The commissioner shall have the power to determine or specify who is a "handler" with respect to an agricultural commodity under a marketing agreement or order.

(6) "Marketable agricultural product" is a product which meets the requirements for regulation under any marketing order, marketing agreement, or regulation in effect in the area in which the same is produced, handled, or distributed.

(7) "Marketing agreement" means a voluntary agreement between producers, handlers, processors, or distributors and the commissioner of agriculture in which the producers, handlers, processors, or distributors who sign such agreement agree to follow certain rules set forth by the agreement.

(8) "Marketing order" means an order issued by the commissioner of agriculture pursuant to this article, prescribing rules and regulations governing the processing, distributing, sale of, or handling in any manner of any agricultural commodity in Colorado during any specified period or periods.

(9) "Person" means an individual, firm, corporation, association, or any other business unit.

(10) "Processor" means any person engaged in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural product for the purpose of marketing such commodity, but shall not include a person engaged in manufacturing from an agricultural commodity, so changed in form, another and different product.

(11) "Producer" means any person engaged within this state in the business of producing, or causing to be produced for market, any agricultural commodity.

(12) "Product" means an agricultural commodity which has been placed in condition for sale or distribution.

(13) "Retailer" means any person who purchases or acquires any agricultural commodity for resale at retail to the general public at a fixed business location in the state for consumption off such premises, but such person shall also be included within the definition of distributor, as set forth in this section, to the extent that he engages in the business of a distributor as defined in this section.

(14) "To distribute" means to engage in the business of a distributor as defined in this section.

(15) "To handle" means to engage in the business of a handler as defined in this section.

(16) "To process" means to engage in the business of a processor as defined in this section.

(17) "Unfair competition" means the use of unfair methods of competition and unfair or deceptive practices in business for the purpose of, or having the natural and probable effect of, eliminating or injuring competition, and shall include, but not be limited to: Sales below cost, except those made in good faith to meet a legal price of a competitor; discriminatory pricing; discriminatory discounting and rebating, either direct or indirect; unreasonable extensions of credit; subsidizing of customers; misleading labeling or advertising; and solicitation by misleading or false statements.

Source: L. 39: p. 195, § 4. CSA: C. 106, § 49. L. 51: p. 559, § 1. L. 53: p. 116, § 1. CRS 53: § 7-3-4. L. 55: pp. 147, 148, §§ 3, 4. L. 57: p. 133, § 1. L. 58: p. 101, § 1. L. 63: p. 161, § 1. C.R.S. 1963: § 7-3-4. L. 69: p. 112, § 3. L. 70: p. 116, §§ 1, 2. L. 79: (1) amended, p. 1324, § 1, effective May 31. L. 94: (1) amended, p. 327, § 12, effective March 1, 1995. L. 2001: (5) amended, p. 3, § 1, effective August 8. L. 2005: (1) amended, p. 351, § 11, effective August 8.

35-28-105. Administration of article. (1) The commissioner of agriculture shall administer and enforce the provisions of this article and shall have all of the administrative powers conferred upon the head of a department of the state. In order to effectuate the declared purposes of this article, the commissioner of agriculture is authorized to issue, administer, and enforce the provisions of marketing orders.

(2) Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this article with respect to any agricultural commodity, either upon his own motion or upon application of any producer or handler of such commodity, he shall give due notice of and an opportunity for a public hearing upon a proposed marketing order.

(3) Due notice of any hearing called for such purpose shall be given to all persons, who may be directly affected by any action of the commissioner pursuant to the provisions of this article, and whose names appear upon lists to be filed by such agricultural industry with the commissioner. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commissioner at his office.

(4) In order to effectuate the declared policy of this article, the commissioner has the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, distributors, handlers, producers, and others engaged in the handling of any agricultural commodity, regulating the preparation, sale, and handling of such agricultural commodity, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no matter affect the issuance, administration, or enforcement of any marketing order provided for in this article. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in this article.

Source: L. 39: p. 196, § 5. CSA: C. 106, § 50. L. 53: p. 116, § 2. CRS 53: § 7-3-5. L. 55: p. 148, § 5. C.R.S. 1963: § 7-3-5. L. 69: p. 113, § 4.

ANNOTATION

There is nothing in agricultural marketing act which requires that marketing order be drafted at or following public hearing. Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

Whether particular marketing order is reasonable and adapted to objects sought to be accomplished, must be determined on fac-

tual considerations. Swisher v. Brown, 157 Colo. 378, 402 P.2d 621 (1965).

Marketing agreements and orders are to be issued and administered separately, neither being a prerequisite to the other. Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-106. Marketing order issued - when. (1) After such notice and hearing the commissioner may issue a marketing order if he finds and sets forth in such marketing order that such order will tend to:

(a) Reestablish or maintain prices received by producers for such agricultural commodity at a level which will give to such commodity a purchasing power, with respect to the articles and services which farmers commonly buy, equivalent to the purchasing power of such commodity in the base period. The base period shall be such period in which the commissioner finds that the volume of production of such commodity was adequate to supply the requirements of consumers thereof and the net returns to producers thereof were sufficient to provide an adequate standard of living to the farm operator and his family.

(b) Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for such commodity;

(c) Prevent the unreasonable or unnecessary waste of agricultural wealth because of improper preparation of such agricultural commodity for market, lack of uniform grading and inspection, or excessive shipments to markets;

(d) Protect the interests of consumers of such commodity, by exercising the powers of this article only to such extent as is necessary to effectuate the declared purposes of this article;

(e) Eliminate unfair competition.

(2) In making the findings set forth in subsection (1) of this section, the commissioner shall take into consideration all facts available to him with respect to the following economic factors:

(a) The quantity of such agricultural commodity available for distribution;

(b) The quantity of such agricultural commodity normally required by consumers;

(c) The cost of producing, processing, distributing, and marketing such agricultural commodity as determined by available statistics and surveys;

(d) The purchasing power of consumers as indicated by reports and indices;

(e) The level of prices of commodities, services, and articles which the farmers commonly buy;

(f) The level of prices of other commodities which compete with or are utilized as substitutes for such agricultural commodity.

Source: L. 39: p. 197, § 6. CSA: C. 106, § 51. CRS 53: § 7-3-6. L. 55: p. 148, § 6. C.R.S. 1963: § 7-3-6. L. 69: pp. 113, 114, §§ 5, 6.

ANNOTATION

Only one criterion needed for market order. Legislative intent is that any one or more of the four specified criteria in subsection (1) can be found to be in need of accomplishment for the commissioner to issue a market order. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

All that is required is that commissioner's findings substantially conform to findings

which this section provides as the basis of the marketing order. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

And it is neither reasonable nor desirable that marketing order should be predicated solely on information obtained at hearings. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-107. Board of control. (1) Any marketing order pursuant to this article shall provide for the establishment of a board of control to administer such order in accordance with its terms and provisions. The members of the board shall be appointed by the commissioner from nominations submitted by the industry and shall hold office until the expiration of their term or until such appointment is withdrawn by the commissioner for cause. All nominations for board members submitted by the industry affected by the marketing order affecting wheat shall be submitted to the commissioner prior to the beginning of the fiscal year for such industry established pursuant to section 35-28-113 (4) or by rule. If the marketing order affects directly only producers of a particular commodity, the members of the board shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the board shall be handlers. If the marketing order affects directly both producers and handlers of a particular commodity such board shall be composed of both producers and handlers. The number of producers or handlers upon any such board shall be such number of producers or handlers as the commissioner finds is necessary to properly administer such order.

(2) No member of any such board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties authorized in this article. The commissioner may authorize such board to employ necessary personnel, including an attorney approved by the attorney general, fix their compensation and terms of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as provided in sections 35-28-113 and 35-28-114, as the commissioner may deem necessary and proper to enable such board properly to perform such of its duties as are authorized in this article. The duties of any such board shall be administrative only and may include only the following:

(a) Subject to the approval of the commissioner to administer such marketing agreement or order;

(b) To recommend to the commissioner administrative rules and regulations relating to the marketing agreement or order;

- (c) To receive and report to the commissioner complaints of violations of the marketing agreement or order;
- (d) To recommend to the commissioner amendments to the marketing agreement or order;
- (e) To submit to the commissioner for his approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of this article and also to submit for approval a method of assessing and collecting such funds, as the commissioner may find necessary for the administration of such marketing agreement or order;
- (f) To assist the commissioner in the collection of such necessary information and data as the commissioner may deem necessary to the proper administration of this article;
- (g) To cooperate with colleges and universities, other research institutions, or groups for the purpose of seeking methods of greater utilization of wheat and wheat products.

Source: L. 39: p. 198, § 7. L. 41: p. 90, § 1. CSA: C. 106, § 52. CRS 53: § 7-3-7. C.R.S. 1963: § 7-3-7. L. 77: (2)(g) added, p. 1606, § 1, effective June 2. L. 92: (1) amended, p. 164, § 1, effective March 16.

35-28-108. Contents of marketing order. (1) In accordance with the provisions, restrictions, and limitations set forth in this article, any marketing agreement or order issued by the commissioner pursuant to this article may contain any of the following provisions for regulating, within this state, the handling, sale, and operations of processing or distributing by producers, handlers, or distributors of any agricultural commodity, but no others:

- (a) Provisions for determining the existence and extent of the surplus of any agricultural commodity, or of any grade, size, species, or other classification or quality thereof, for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers, processors, distributors, or other handlers affected;
- (b) Provisions for limiting the total quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, which may be processed, distributed, or otherwise handled by any persons engaged in such processing, distributing, or handling during any specified period. The total quantity of any such commodity so regulated and permitted to be processed, distributed, or otherwise handled shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demand of consumers for such commodity.
- (c) Provisions for allotting the quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality thereof, which each handler may purchase or acquire from or handle on behalf of any producers thereof during any specified period under a uniform rule, applicable to all handlers so regulated, based upon the amounts produced or sold by such producers in a prior period which the commissioner finds to be representative, or upon the current season's production or sales of such products, or both, to the end that the total quantity of such commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, so purchased or handled shall be apportioned equitably among the producers thereof;
- (d) Provisions for allotting the quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, which each handler may process, distribute, or handle under a uniform rule, applicable to all handlers so regulated, based upon quantities of such commodity or of any grades, size, species, or other classification, or quality thereof, of the current season's crop which each such handler has available for such processing, distribution, or handling, or upon the quantities of such commodity or of any grade, size, species, or other classification, or quality thereof, so processed, distributed, or handled by each such handler in a prior period which the commissioner finds to be representative, or based upon both, to the end that the total quantity of such commodity, or any grade, size, species, or other classification, or portion or combinations or quality thereof, processed, distributed, or handled during any specified period shall be equitably apportioned among all such handlers thereof;

(e) Provisions regulating the period during which any agricultural commodity, or any grade, size, species, or classification, or quality or portions or combinations of such commodity, may be processed, distributed, or otherwise marketed;

(f) Provisions for the establishment of surplus or reserve pools of any agricultural commodity, or of the representative value of such commodity, or of any grade, size, species, or other classification, or quality, or portions, or combination thereof, and providing for the sale of such surplus commodity and the equitable distribution, among the persons interested therein, of the net returns derived from the sale of such commodity or such commodity or such distribution of the representative value of such commodity;

(g) Provisions for the establishment of uniform grading and inspection of any agricultural commodity delivered by producers to handlers, processors, distributors, or others engaging in the handling, processing, or distributing thereof and for the establishment of grading standards of quality, condition, size, or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading standards so established. Such grading standards for any such commodity shall not be established below any minimum standards now prescribed by law for such commodity. All inspections made necessary by such provisions shall be performed by the federal-state inspection service or by such other agent as designated by the commissioner.

(h) Provisions for the establishment of plans for advertising and sales promotion to create new or larger markets for agricultural commodities grown in the state of Colorado. The commissioner is authorized to prepare, issue, administer, and enforce plans for promoting the sale of any agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the commissioner which makes use of false or unwarranted claims on behalf of any such product, or disparages the quality, value, sale, or use of any other agricultural commodity.

(i) Provisions for price posting; but any grade, size, species, or other classification, quality, portion, or combinations thereof of any marketable agricultural product shall be sold by producers, handlers, or distributors thereof only at prices filed by such producers, handlers, or distributors in the manner provided for in such order;

(j) Provisions for requiring the labeling, marking, or branding of any agricultural commodity to be in conformity with the regulations specified in any marketing agreement or order issued under authority of this article;

(k) Provisions for establishing convenient stations for inspection, weighing, and receiving payment for any agricultural commodities sold or delivered by producers or distributors in conformity with any marketing agreement or order issued under authority of this article, and providing for the collection of expenses of operating such stations;

(l) Provisions allowing a board of control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of this article;

(m) Provisions for requiring the packaging of any agricultural commodity to be in containers, and setting standards for such containers, or pack thereof, in conformity with the regulations or authority contained in any marketing agreement or order issued, adopted, or promulgated under the authority of this article;

(n) Provisions for the establishment of programs in the field of research for the improvement of production, control of insects or disease, harvesting, storing, transporting, marketing, handling, processing, or any other phase of research work which would benefit any agricultural commodity produced in Colorado;

(o) Provisions for establishing processing plants or necessary arrangements with persons or companies for the processing of agricultural products, which processing would tend to effectuate the purposes of the article;

(p) Provisions establishing methods whereby agricultural commodities and products other than marketable products may be disposed of and prohibiting dispositions thereof except as so provided;

(q) Provisions for the limitation and prevention of unfair methods of competition in the marketing of agricultural products.

(2) Notwithstanding any other provisions of law, whenever a marketing order issued by the commissioner pursuant to this article contains any terms or conditions regulating the

handling, processing, or distribution of any agricultural commodity that may be marketed in the area covered by such order, the importation into the area of any such commodity shall be prohibited unless the handler, processor, or distributor of such commodity complies with such terms and conditions.

Source: L. 39: p. 198, § 7. L. 41: p. 90, § 1. CSA: C. 106, § 52. L. 53: p. 116, § 3. CRS 53: § 7-3-8. L. 55: pp. 148-150, §§ 7, 8. L. 63: p. 164, § 2. C.R.S. 1963: § 7-3-8. L. 69: p. 114, § 7.

ANNOTATION

Marketing order cannot be extended to retail outlets. The general assembly did not intend that marketing orders, agreements, and regulations issued under the agricultural marketing act should cover any retail functions. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

Marketing order not violative of federal antitrust laws. A milk marketing order which provides for the posting of prices, discounts, and rebates by handlers and distributors, but does not specify what those prices should be, nor

requires that all handlers and distributors post the same prices, which allows for the changing of prices after notice and to meet unregulated competition, plus requires that prices be uniform and without discrimination between customers, in no way involves the fixing of prices, nor is a conflict with the federal antitrust laws or the commerce and supremacy clauses of the United States Constitution. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-109. When marketing order effective. (1) No marketing agreement or amendments thereto, directly affecting handlers, issued pursuant to this article, shall become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers engaged in the operation covered by the marketing agreement who handle not less than fifty percent of the volume of the commodity covered thereby which is processed or distributed within the area defined in such agreement and by not less than fifty percent of the number of such handlers engaged in the operation covered by such agreement.

(2) (a) No marketing order or amendments thereto directly affecting producers shall become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least two-thirds of the producers who participated in a referendum on the question of its approval, and who, during such representative period, have produced for market the commodities specified therein in commercial quantities within the production area specified in such marketing agreement or order, and who, during such respective period, have produced at least two-thirds of the volume voted of such commodity sold within the marketing area specified in such marketing agreement or order. This paragraph (a) shall not apply to marketing orders which contain provisions for refunds of assessments as provided in section 35-28-113.5.

(b) Except as provided in section 35-28-113 (3) and notwithstanding paragraph (a) of this subsection (2), no marketing order or amendments thereto directly affecting producers of wheat shall become effective unless or until the commissioner determines that the issuance of such order is approved and favored by at least two-thirds of the producers of wheat who participated in a referendum. For purposes of this provision, a "producer of wheat" means a person who harvested or intends to harvest in any manner in excess of fifteen acres of wheat and who is entitled to share in the proceeds of such wheat crop as owner-operator, cash tenant, standing rent or fixed rent tenant, landlord of a share tenant, share tenant, or sharecropper in the calendar year determined by the commissioner to be representative for purposes of voting approval. Wheat acreage placed in the federal soil bank program shall be regarded as wheat acreage for this purpose.

(c) Repealed.

(3) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers of more than fifty percent of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement

relating to such commodity or product thereof, on which a hearing has been held, the commissioner of agriculture, with the approval of the governor, determines:

(a) That the refusal or failure to sign a marketing agreement, by the handlers of more than fifty percent of the volume of the commodity or product thereof specified therein which is produced or marketed within the production or marketing area specified therein, tends to prevent the effectuation of the declared policy of this article with respect to such commodity or product; and

(b) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during a representative period determined by the commissioner, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the marketing area specified in such marketing agreement or order; and by producers who, during such representative period, have produced for market at least two-thirds of the volume voted of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume voted of such commodity sold within the marketing area specified in such marketing agreement or order.

(c) Notwithstanding paragraph (b) of this subsection (3), approval of a marketing order affecting wheat must be approved or favored by at least two-thirds of the producers of wheat who participated in a referendum on the question of its approval. For purposes of this paragraph (c), a "producer of wheat" means a person who harvested or intends to harvest in any manner in excess of fifteen acres of wheat and who is entitled to share in the proceeds of such wheat crop as owner-operator, cash tenant, standing rent or fixed rent tenant, landlord of a share tenant, share tenant, or sharecropper in the calendar year for purposes of voting approval. Wheat acreage placed in the federal soil bank program shall be regarded as wheat acreage for this purpose.

(4) In finding whether such order is assented to pursuant to the provisions of this article, the commissioner may consider the expression of any nonprofit agricultural cooperative marketing association which is authorized by its members to so express the approval or disapproval of the producers who are members of, or stockholders in, such nonprofit agricultural cooperative marketing association.

Source: L. 39: p. 201, § 8. CSA: C. 106, § 53. L. 51: pp. 559, 560, §§ 2, 3. CRS 53: § 7-3-9. L. 57: p. 133, § 2. L. 58: pp. 101-103, §§ 2, 3. L. 59: p. 185, §§ 1, 2. C.R.S. 1963: § 7-3-9. L. 77: (2)(c) added, p. 1606, § 2, effective June 2. L. 87: (2)(a) amended, p. 1288, § 2, effective April 6. L. 88: (2)(b) amended, p. 1222, § 1, effective April 13. L. 96: (2)(c) repealed, p. 1217, § 8, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2)(c), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Referendum is required of producers but not handlers on a marketing agreement. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

The 50% requirements of subsection (1) clearly apply only to marketing agreements, and not to marketing orders. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

Additional requirements of subsection (3) apply only where there has been attempted marketing agreement which has failed to gain the requisite approval. *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-110. Orders regulating processing. Subject to the provisions, restrictions, and limitations imposed in this article, the commissioner may issue marketing orders regulating within this state the processing, distributing, or handling in any manner of agricultural commodities by all persons engaged in such processing, distributing, or handling of such commodities.

Source: L. 39: p. 201, § 8. CSA: C. 106, § 53. L. 51: pp. 559, 560, §§ 2, 3. CRS 53: § 7-3-10. L. 55: p. 150, § 9. C.R.S. 1963: § 7-3-10.

35-28-111. Termination of marketing order. The commissioner shall suspend, amend, or terminate any marketing order, or any provision of any marketing order, whenever he finds that such provision or order does not tend to effectuate the declared purposes of this article within the standards and subject to the limitations and restrictions imposed in this article, but such suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty percent of the producers, who are engaged within the designated production area in the production for market of the commodity specified in such marketing order, or who produce for market more than fifty percent of the volume of such commodity produced within the designated production area for market, the commissioner shall terminate or suspend for a specified period such marketing order or provision thereof, but such termination shall be effective only if announced on or before such date, as may be specified in such order.

Source: L. 39: p. 201, § 8. CSA: C. 106, § 53. CRS 53: § 7-3-11. C.R.S. 1963: § 7-3-11.

ANNOTATION

Commissioner has no jurisdiction to hear claim relating to constitutionality of marketing order, since an administrative agency is generally without jurisdiction to decide the con-

stitutionality of its own enabling legislation. *People ex rel. Commissioner of Agriculture v. Webster*, 40 Colo. App. 144, 570 P.2d 560 (1977).

35-28-112. Notice of issuance. Upon the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the commissioner in his office and a copy of such notice shall be published in a newspaper of general circulation published in the capital of the state and in such other newspapers as the commissioner may prescribe. No order and no suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication. It is also the duty of the commissioner to mail a copy of the notice of said issuance to all persons, directly affected by the terms of such order, suspension, amendment, or termination, whose names and addresses may be on file in the office of the commissioner and to every person who files in the office of the commissioner a written request for such notice.

Source: L. 39: p. 201, § 8. CSA: C. 106, § 53. CRS 53: § 7-3-12. C.R.S. 1963: § 7-3-12.

35-28-113. Budgeting and collection of fees. (1) For the purpose of providing funds to defray necessary expenses, the board of control shall prepare a budget for the administration and operating costs and expenses, including advertising and sales promotion when same are requested in any marketing agreement or order executed under this article, which budget shall be approved by the commissioner. The collection of such necessary fees and the times and conditions of payment, in no case to exceed five percent of the gross dollar volume of such sales, or five percent of the gross dollar volume of purchases or amounts handled, distributed, or processed, shall become a part of any marketing order upon adoption as provided in this article.

(2) Every person engaged in the production, processing, distributing, or handling of any marketable agricultural product produced, sold, or marketed in this state and directly affected by any marketing order issued pursuant to this article for such commodity shall pay, or collect and pay, to the commissioner at such time and in such manner as prescribed by the order as adopted an assessment covering the budget provided by this article, which assessment shall be the percentage of the gross dollar volume or amount per unit of such sales, or percentage of the gross dollar volume of purchases or amounts handled, distributed, or processed, of any commodity affected by such marketing order, as is necessary to defray the expenses of the enforcement of this article, but in no case to exceed five percent of the gross dollar volume.

(3) Except as provided in section 35-28-113.5, whenever the board of control deems it necessary to raise the amount collected under the provisions of this section for a marketing order involving wheat, the commissioner shall ask for approval of the raise by a referendum on the question of the raise, which must be favored and approved by at least two-thirds of the producers who participate in the referendum.

(4) The fiscal year for the marketing order issued pursuant to section 35-28-106 affecting wheat shall be the period so established by the commissioner by rule and regulation after consideration of recommendations by the board of control of such order.

(5) (a) Notwithstanding any other provision of this article, if requested by a board of control affecting wheat, corn, or dry edible beans, the commissioner may amend a marketing order as described in this article to require the first handler of such commodity or product in this state to pay, or collect and pay, to the commissioner an assessment at such time and in such manner as shall be prescribed by the commissioner if the commissioner, with the approval of the governor, determines that:

(I) Wheat, corn, or dry edible beans produced in another state and shipped into this state for sale or distribution tends to prevent the effectuation of the declared policy of this article with respect to such commodity or product produced in this state; and

(II) The effectuation of the declared policy of this article would be furthered by collection of assessments on such commodity or product shipped into this state.

(b) Any assessment authorized pursuant to this subsection (5) shall be equivalent to the assessment required by the provisions of the marketing order.

Source: L. 39: p. 203, § 9. **CSA:** C. 106, § 54. **CRS 53:** § 7-3-13. **L. 55:** p. 150, § 10. **C.R.S. 1963:** § 7-3-13. **L. 73:** p. 199, § 1. **L. 77:** (3) added, p. 1606, § 3, effective June 2. **L. 79:** (3) amended, p. 1324, § 2, effective May 31. **L. 88:** (3) amended, p. 1222, § 2, effective April 13. **L. 92:** (4) added, p. 164, § 2, effective March 16. **L. 2001:** (1) and (2) amended and (5) added, p. 3, § 2, effective August 8.

35-28-113.5. Refunds of assessments - request by producer. (1) Marketing orders issued after July 1, 1987, as well as amendments to such marketing orders and amendments to marketing orders in existence prior to July 1, 1987, which marketing orders and amendments are issued pursuant to the provisions of this article and which directly affect producers, may contain provisions for refunds of assessments or for refunds of portions of assessments. Any marketing order or amendment which contains such a provision shall not become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least a simple majority of the producers who participated in a referendum on the question of its approval and who, during such representative period, have produced for market the commodities specified therein in commercial quantities within the production area specified in such marketing agreement or order. Only the assessment or assessment raise or raises approved by a simple majority of the producers as provided in this subsection (1) or that portion of the assessment or assessment raise which is actually levied by the commissioner shall be subject to the provisions of this section.

(2) A producer may request a refund of assessments or a refund of a portion of assessments within thirty days after payment of such assessments. The commissioner shall promulgate such rules and regulations as are necessary for the implementation of this section.

Source: L. 87: Entire section added, p. 1288, § 1, effective April 6. L. 88: Entire section amended, p. 1222, § 3, effective April 13.

35-28-114. Disposition of funds. (1) Any moneys collected by the commissioner pursuant to this article shall be deposited in a bank or other depository approved by the state treasurer, allocated to each marketing order under which they are collected, and disbursed by the commissioner only for the necessary expenses incurred by the board of control and the commissioner and approved by the commissioner with respect to each such separate marketing order. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the commissioner. All such expenditures by the commissioner shall be audited at least annually and a copy of such audit shall be delivered within thirty days after the completion thereof to the governor and the commissioner of agriculture.

(2) Any moneys remaining in such fund, allocable to any particular agricultural commodity affected by a marketing order, at the discretion of the commissioner, may be refunded at the close of any marketing season, upon a pro rata basis, to all persons from whom assessments were collected, or such portion of such moneys as may be recommended by the board of control and approved by the commissioner may be carried over into the next succeeding marketing season whenever the commissioner finds that such moneys may be required to assist in defraying the cost of operating such marketing order in such succeeding season. Upon termination by the commissioner of any marketing order, any moneys remaining, and not required by the commissioner to defray the expenses of such marketing order, shall be returned by the commissioner, upon a pro rata basis, to all persons from whom assessments were collected. If the commissioner finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the commissioner may use the moneys in such fund to defray the expenses incurred by him in the formulation, issuance, administration, or enforcement of any subsequent marketing order for such commodity.

Source: L. 39: p. 203, § 9. CSA: C. 106, § 54. L. 51: p. 560, § 4. CRS 53: § 7-3-14. C.R.S. 1963: § 7-3-14.

35-28-115. Limitation of marketing orders. (1) Marketing orders issued by the commissioner under this article may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective. No marketing order shall be issued by the commissioner unless it embraces all persons of a like class in a given area who are engaged in a specific and distinctive agricultural industry or trade within this state.

(2) Within the terms of this article, production or marketing areas as to peaches shall be classified as early maturing, which shall be at altitudes of less than five thousand feet, and late maturing, which shall be at altitudes of more than five thousand feet, and such areas shall be separate and distinct classes for all purposes under this article insofar as peaches are concerned.

Source: L. 39: p. 205, § 10. CSA: C. 106, § 55. CRS 53: § 7-3-15. C.R.S. 1963: § 7-3-15.

35-28-116. Administration and enforcement. (1) The commissioner of agriculture shall be responsible for the administration and enforcement of this article.

(2) Every person who violates any provision of this article or any provision of any marketing order duly issued by the commissioner under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment. Each day during which any such violations continue constitutes a separate offense.

(3) Upon the filing of a verified complaint charging violation of any provisions of this article or of any provision of any marketing order issued by the commissioner under this article, and prior to the institution of any court proceeding authorized in this section, the commissioner in his discretion may refer the matter to the attorney general or any district attorney of this state for action pursuant to the provisions of this article or call a hearing to consider the charges set forth in such verified complaint. In such case, the commissioner shall cause a copy of such complaint, together with a notice of the time and place of hearing of such complaint, to be served personally, or by mail, upon the person named as respondent therein. Such service shall be made at least three days before said hearing date. The hearing shall be held in the city or town in which is situated the principal place of business of the respondent, or in which the violation complained of is alleged to have occurred, or in the nearest office of the department of agriculture, at the discretion of the commissioner. At the time and place designated for such hearing, the commissioner or his agents shall hear the parties to said complaint and shall enter in the office of the commissioner at Denver his findings based upon facts established at such hearing.

(4) If the commissioner finds that no violation has occurred he shall forthwith dismiss such complaint and notify the parties to such complaint.

(5) If the commissioner finds that a violation has occurred he shall so enter his findings and notify the parties to such complaint. Should the respondent thereafter fail, neglect, or refuse to desist from such violation, within the time specified by the commissioner, the commissioner may thereupon file a complaint against such respondent in a court of competent jurisdiction as set forth in this section.

(6) Each district attorney of this state may upon his own initiative and shall upon any complaint of any person, if, after investigation he believes a violation has occurred, bring a criminal action in the proper court in his district in the name of the people of this state in any court of competent jurisdiction in the state of Colorado against any person violating any provision of this article or of any marketing order duly issued by the commissioner under this article.

(7) (a) Any person who violates any provision of this article or of any marketing order or rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or by the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision, marketing order, or rule on at least one prior occasion occurring after March 23, 1995.

(b) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the commissioner is unable to collect the civil penalty, or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(e) All penalties collected pursuant to this section shall be transmitted to the general fund.

(8) (a) The commissioner shall enforce the provisions of this article.

(b) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any marketing order or rule issued pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(c) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any marketing order or rule issued under this

article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any marketing order, rule, or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(9) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff reasonable costs of such suit including attorney's fees incurred by an advisory board in the prosecution of such action.

(10) Any such action may be commenced either in the county where defendant resides or where any act or omission or part thereof complained thereof occurred.

(11) The penalties and remedies prescribed in this article with respect to any violation mentioned in this article shall be concurrent and alternative, and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any other civil, criminal, or administrative rights, remedies, forfeitures, or penalties provided or allowed by law with respect to any such violation.

(12) Any handler or processor located outside of this state who processes products which are marketed or distributed in this state on a continuing basis, whether directly or indirectly, shall be considered to be engaged in the transaction of business within this state and shall be subject to the jurisdiction of the courts of this state pursuant to the provisions of section 13-1-124, C.R.S. Any action to enforce any provision of this article or any marketing order issued pursuant to this article against such out-of-state handler or processor by the commissioner shall be considered to have arisen from the transaction of business in this state and shall subject the handler or processor to the jurisdiction of the courts of this state.

Source: L. 39: p. 205, § 11. CSA: C. 106, § 56. CRS 53: § 7-3-16. C.R.S. 1963: § 7-3-16. L. 73: p. 200, § 1. L. 95: (7) and (8) amended, p. 65, § 1, effective March 23. L. 2004: (7)(a), (8)(b), and (8)(c) amended, p. 65, § 1, effective March 8.

Editor's note: Section 2 of chapter 19, Session Laws of Colorado 2004, provides that the act amending subsections (7)(a), (8)(b), and (8)(c) applies to marketing orders issued before, on, or after March 8, 2004.

ANNOTATION

Option in initiating complaint proceedings.

Under this section, the commissioner of agriculture has the option of initiating complaint proceedings in the administrative agency or in the district court. *People ex rel. Commissioner of Agriculture v. Webster*, 40 Colo. App. 144, 570 P.2d 560 (1977).

Once commissioner chooses to proceed in district court, the district court is clothed with exclusive jurisdiction to hear the entire matter. *People ex rel. Commissioner of Agriculture v. Webster*, 40 Colo. App. 144, 570 P.2d 560 (1977).

Assertion of affirmative defenses prior to exhaustion of administrative remedies. Where the commissioner elects to initiate the enforcement proceeding in the district court, the defendant can assert his affirmative defenses without first exhausting his administrative remedies. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

Proper notice to defendant of action by commission, see *Shoenberg Farms, Inc. v. People ex rel. Swisher*, 166 Colo. 199, 444 P.2d 277 (1968).

Applied in *People ex rel. Orcutt v. District Court*, 167 Colo. 162, 445 P.2d 887 (1968).

35-28-117. Assessment a personal debt. Any assessment levied in such specified amount as may be determined by the commissioner pursuant to the provisions of section 35-28-113 shall constitute a personal debt of every person so assessed and shall be due and payable to the commissioner when payment is called for by the commissioner. In the event of failure of such person to pay any such assessment upon the date determined by the commissioner, the commissioner may file a complaint against such person in a state court of competent jurisdiction for the collection thereof, as provided in section 35-28-116.

Source: L. 39: p. 207, § 12. CSA: C. 106, § 57. CRS 53: § 7-3-17. C.R.S. 1963: § 7-3-17.

ANNOTATION

Only when commissioner files claim for collection may assessment be contested. After the agriculture commissioner has determined the amount of the assessment and called for collection, if payment is not forthcoming, then the commissioner may file a claim for collection of the assessment. It is at such time that the taxpayers have a full and complete opportunity to

challenge the assessment. Until the commissioner makes a determination of the amount of the assessment, the judiciary has no jurisdiction to interfere where the commissioner is merely exercising his statutory duties. *People ex rel. Orcutt v. District Court*, 167 Colo. 162, 445 P.2d 887 (1968).

35-28-118. No personal liability. The members of any such board of control, including employees of such board, shall not be held responsible individually in any way whatsoever to any producer, processor, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of such board. The liability of the members of such board shall be several and not joint and no member shall be liable for the default of any other member.

Source: L. 39: p. 207, § 13. CSA: C. 106, § 58. CRS 53: § 7-3-18. C.R.S. 1963: § 7-3-18.

35-28-119. Records - information - hearings. (1) The commissioner may require all processors or distributors subject to the provisions of any marketing order issued pursuant to this article to maintain books and records reflecting their operations under said marketing order, and to furnish to the commissioner or his duly authorized or designated representatives such information as may be from time to time requested by them relating to operations under said marketing order, and to permit the inspection by said commissioner, or his duly authorized or designated representatives, of such portions of such books and records as relate to operations under said marketing order.

(2) Information obtained by any person under this article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same, or any attorney employed to give legal advice thereupon, or by court order.

(3) To carry out the purposes of this article, the commissioner may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind. Upon failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the commissioner in obedience to the subpoena of the commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued by him; except that no natural person so testifying shall be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

Source: L. 39: p. 207, § 14. CSA: C. 106, § 59. CRS 53: § 7-3-19. C.R.S. 1963: § 7-3-19. L. 72: p. 554, § 1.

Cross references: For perjury in the first degree, see § 18-8-502.

ANNOTATION

Procedure of this section takes precedence over rules of civil procedure. If the procedure and practice set forth in this section is in any particular inconsistent or in conflict with the rules of civil procedure, the statute — and not the rules — would govern. *People ex rel. Orcutt v. District Court*, 164 Colo. 385, 435 P.2d 374 (1967).

Subpoena may be quashed. A party may file a motion to quash a subpoena if they feel that the subpoena calls for information that is not reasonably related to the matter under inquiry by the administrative body, or is otherwise oppressive or unreasonable in its demands. *People ex rel. Orcutt v. District Court*, 164 Colo. 385, 435 P.2d 374 (1967).

35-28-120. Deposit to defray expenses. (1) Prior to the issuance of any marketing order by the commissioner, he may require the applicants therefor to deposit with him such amount as the commissioner may deem necessary to defray the expenses of preparing and making effective such marketing order. Such funds shall be received, deposited, and disbursed by the commissioner in accordance with the provisions as set forth in section 35-28-114.

(2) The commissioner may reimburse the applicant in the amount of any such deposit from any funds received by the commissioner pursuant to the provisions of section 35-28-114.

Source: L. 39: p. 208, § 15. CSA: C. 106, § 60. CRS 53: § 7-3-20. C.R.S. 1963: § 7-3-20.

35-28-121. General provisions. (1) In the event the commissioner finds that it tends to effectuate the declared purposes of this article within the standards prescribed in this article, the commissioner may issue a marketing order, applicable to the marketing of any agricultural commodity containing like terms, provisions, methods, and procedures as any license or order regulating the marketing of such commodity issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting the members of any board or other advisory agency under such marketing order, the commissioner shall utilize, insofar as practicable, the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel.

(2) The commissioner is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders. Said commissioner is authorized to conduct joint hearings and issue joint or concurrent marketing orders for the purposes and within the standards set forth in this article, and he may exercise any administrative authority prescribed by this article to effect such uniformity of administration and regulation.

(3) Nothing in this article applies to any order, rule, or regulation issued or issuable by the public utilities commission with respect to the operation of common carriers.

(4) In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this article or a marketing order issued under this article and in furtherance of the purposes and provisions of this article shall be a complete defense to such action or proceeding.

Source: L. 39: p. 208, § 16. CSA: C. 106, § 61. L. 53: p. 118, § 4. CRS 53: § 7-3-21. L. 55: p. 151, § 11. L. 61: p. 167, § 1. L. 62: p. 124, § 1. L. 63: p. 165, § 1. C.R.S. 1963: § 7-3-21.

35-28-122. Application of article. The provisions of this article shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engaged

in the processing or distribution of agricultural commodities as defined in this article; but all persons acting as producers, handlers, processors, or distributors shall conform with all the provisions of any applicable marketing order, marketing agreement, or regulations issued pursuant to this law before shipping or causing to be shipped any agricultural commodity.

Source: L. 39: p. 209, § 17. CSA: C. 106, § 62. CRS 53: § 7-3-22. L. 55: p. 151, § 12. C.R.S. 1963: § 7-3-22. L. 69: p. 115, § 8.

ANNOTATION

Limited applicability to retailers. This section applies to retailers only as to any operation they may be engaged in at the processing and

distribution level. Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-123. Other laws superseded. It is the legislative intent that the provisions of this article shall control, to the exclusion of any general law of this state in conflict therewith, and specifically shall supersede the provisions of article 23 of this title, if said article is in conflict herewith.

Source: L. 39: p. 209, § 18. CSA: C. 106, § 63. CRS 53: § 7-3-23. C.R.S. 1963: § 7-3-23.

ANNOTATION

Specific procedural requirements for issuance and administration of marketing orders are set forth in agricultural marketing act, superseding the general procedure of the admin-

istrative code. Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

35-28-124. Agricultural commodities - preferences - promotion - task force - legislative declaration - repeal. (Repealed)

Source: L. 2004: Entire section added, p. 1733, § 1, effective June 4.

Editor's note: Subsection (5) provided for the repeal of this section, effective May 1, 2005. (See L. 2004, p. 1733.)

ARTICLE 29

Colorado Seal of Quality

35-29-101.	Legislative declaration.		
35-29-102.	Definitions.	35-29-106.	and take samples.
35-29-103.	Administration - seal of quality.		Authority to make rules and regulations.
35-29-104.	Standards of quality.	35-29-107.	Financing.
35-29-105.	Authority to enter, inspect,	35-29-108.	Unlawful acts.
		35-29-109.	Penalties.

35-29-101. Legislative declaration. The purposes of this article are to provide a means whereby the general public purchasing certain Colorado agricultural products may be assured of the quality and grade of such products; to assure Colorado producers a better return from the sale of higher quality products; to establish a method of labeling and identification of such Colorado products so that purchasers may easily recognize them; to set up standards for quality, condition, packaging, and distribution of Colorado agricultural

products so that the highest quality will be maintained until the product reaches the consumer; and to extend in every practicable way the production and sale of higher quality Colorado-produced agricultural products.

Source: L. 61: p. 173, § 1. CRS 53: § 7-18-1. C.R.S. 1963: § 7-16-1.

35-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Colorado agricultural products" means any agricultural, horticultural, viticultural, or vegetable products or poultry or poultry products grown or produced in the state of Colorado.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Consumer" means any person who buys Colorado agricultural products for personal use and not for resale.

(4) "Container" means any box, carton, crate, bag, wrap, or other process or device used to hold and protect Colorado agricultural products. "Subcontainer" means any container being used within another container.

(5) "Deceptive arrangement" or "deceptive display" means any bulk lot, arrangement, or display of products which has in the exposed surface products which are in quality, size, condition, or any other respect so superior to those which are concealed as to materially misrepresent the bulk lot, arrangement, or display.

(6) "Deceptive pack" means any container or subcontainer which has in the outer layer or any exposed surface any products which are in quality, size, condition, or any other respect so superior to those in the interior of the container or subcontainer or in the unexposed portion as to materially misrepresent the contents.

(7) "Department" means the department of agriculture.

(8) "Distributor" means any person selling, marketing, or distributing Colorado agricultural products.

(9) "Packer" means any person engaged in processing, packing, or preparing Colorado agricultural products for market.

(10) "Person" means any individual, firm, association, corporation, or partnership.

(11) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market any agricultural commodity.

(12) "Retailer" means any person buying Colorado agricultural products from producers, packers, or distributors and selling to consumers.

(13) "Seal of quality" means the design approved by the commissioner, as provided in section 35-29-103 (2), as the Colorado "seal of quality" and which, when imprinted or affixed on labels, packages, or products or used in advertising or in any manner, shall signify the standards of quality provided in section 35-29-104.

Source: L. 61: p. 173, § 2. CRS 53: § 7-18-2. C.R.S. 1963: § 7-16-2.

35-29-103. Administration - seal of quality. (1) The commissioner and the representatives of the department under the direction of the commissioner shall administer and enforce this article; and, in such administration, the commissioner has and may exercise any or all the administrative powers conferred upon him as head of the department.

(2) (a) The commissioner shall produce or cause to be produced a suitable design or drawing, which shall be known as the Colorado seal of quality, to be used in the marketing of Colorado agricultural products.

(b) The title to the seal of quality shall at all times remain in and be reserved to the department of agriculture.

(c) The seal of quality, or any reproduction, copy, or facsimile thereof, may not be used in any advertising, display, labeling, or identification without prior written permission from the department.

(3) When any producer, packer, distributor, or retailer has complied with the provisions of this article and the regulations pursuant thereto, he shall be permitted to use the seal of quality in advertising, labeling, or marketing his product.

(4) The seal of quality may not be used on any agricultural product unless such product was produced in the state of Colorado.

Source: L. 61: p. 174, § 3. CRS 53: § 7-18-3. C.R.S. 1963: § 7-16-3.

35-29-104. Standards of quality. (1) The department shall establish minimum standards of quality for all agricultural products to be marketed under the seal of quality.

(2) The quality standards may be changed from time to time by the department, but any producer, packer, distributor, or retailer affected by the changes shall be notified by the department at least thirty days prior to the effective date of the changes in standards.

(3) The seal of quality shall not be used in the marketing of any agricultural product which does not meet the minimum standards established by the department.

(4) The commissioner shall prescribe methods and procedures of sampling, inspecting, and grading Colorado agricultural products.

(5) Inspectors or representatives of the department shall use such methods and procedures in sampling, checking, and inspecting products to determine the grade, quality, or condition of the product being marketed under the seal of quality.

(6) Any product being marketed under the seal of quality which does not meet the standards of quality established by the department shall be immediately removed from sale until the seal of quality has been removed from the product, label, or container. The department shall be the authority in making the decision to remove the product from sale. Any person refusing or failing to remove the seal of quality from a product, label, or container after being notified by the department shall be deemed in violation of this article.

Source: L. 61: p. 175, § 4. CRS 53: § 7-18-4. C.R.S. 1963: § 7-16-4.

35-29-105. Authority to enter, inspect, and take samples. Any authorized representative of the department may enter and inspect any place where products being marketed under this article are being sold or offered for sale and take such samples as may be necessary to determine the grade, quality, or condition of the product.

Source: L. 61: p. 176, § 5. CRS 53: § 7-18-5. C.R.S. 1963: § 7-16-5.

35-29-106. Authority to make rules and regulations. The department is granted power to make rules and regulations concerning standards for grade, size, quality, and condition of agricultural products being marketed under the seal of quality.

Source: L. 61: p. 176, § 6. CRS 53: § 7-18-6. C.R.S. 1963: § 7-16-6.

Cross references: For rule-making procedures, see article 4 of title 24.

35-29-107. Financing. To defray the expense of establishing the seal of quality program, the department is authorized to produce and sell labels, decals, stamps, mats, streamers, plates, or other forms of identification or advertising containing the seal of quality to be used by those persons marketing Colorado agricultural products under the seal of quality program. Any moneys received shall be placed in a revolving fund and shall only be used to replenish supplies and for advertising the seal of quality program, but the total net assets of the revolving fund, including accounts receivable, inventories, and cash balances, shall not exceed ten thousand dollars. Any net assets in excess of the limit established in this section for the revolving fund on hand at the close of each fiscal period shall be transferred to the general fund.

Source: L. 61: p. 176, § 7. CRS 53: § 7-18-7. C.R.S. 1963: § 7-16-7.

- 35-29-108. Unlawful acts.** (1) It is unlawful for any person:
- (a) To sell or offer for sale any Colorado agricultural product identified by the seal of quality which does not meet the minimum standards established by the department;
 - (b) To sell or offer for sale any agricultural product in any used container on which the seal of quality is printed, stamped, or affixed unless the seal of quality identification has been completely removed or obliterated;
 - (c) To sell or offer for sale Colorado agricultural products bearing the seal of quality label in any container which does not meet the standards established by the department;
 - (d) To sell or offer for sale any Colorado agricultural product in a deceptive pack or in a deceptive arrangement or deceptive display, as defined in section 35-29-102 (5) and (6);
 - (e) To refuse to submit any Colorado agricultural product or container for inspection, sampling, or grading.

Source: L. 61: p. 176, § 8. CRS 53: § 7-18-8. C.R.S. 1963: § 7-16-8.

35-29-109. Penalties. Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 61: p. 177, § 9. CRS 53: § 7-18-9. C.R.S. 1963: § 7-16-9.

ARTICLE 29.5

Colorado Wine Industry Development Act

35-29.5-101.	Short title.		board.
35-29.5-101.5.	Legislative declaration.	35-29.5-105.	Colorado wine industry development fund - use of mon-
35-29.5-102.	Definitions.		neys.
35-29.5-103.	Colorado wine industry devel-	35-29.5-106.	Use of phrase "Colorado
	opment board - creation -		Grown" on wine industry
	members.		labeling. (Repealed)
35-29.5-104.	Duties and powers of the		

35-29.5-101. Short title. This article shall be known and may be cited as the "Colorado Wine Industry Development Act".

Source: L. 90: Entire article added, p. 1598, § 1, effective July 1.

35-29.5-101.5. Legislative declaration. The general assembly hereby finds, determines, and declares that Colorado has a substantial interest in promoting the development of a viable and stable wine industry in this state. The general assembly further finds, determines, and declares that grape cultivation is closely related to fruit cultivation carried out in various parts of Colorado; that grape cultivation and wine production are a logical supplement to, and development of, existing agricultural business conducted in the state; that wine production has become a significant industry in other states because of the action of state and local governments in those areas to foster development of the industry; that a viable wine industry can enhance Colorado's tourist industry; that some aspects of wine industry development can best be accomplished by an industry-wide approach rather than by individual producers, such as conducting scientific research and disseminating and publishing the results of such research, promoting Colorado wines as distinct from those produced in other regions, and promoting awareness of responsible consumption of wine; and that the state should aid Colorado's wine industry through research and promotion to allow the industry to realize its full potential in this state.

Source: L. 97: Entire section added, p. 299, § 5, effective July 1.

35-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the Colorado wine industry development board, created in section 35-29.5-103.

(1.5) "Eastern slope" means the area east of the continental divide.

(2) "Fruit product" means any juice, must concentrate, or extract from fruit whether or not partially fermented.

(2.5) "Grand valley viticultural area" means the federally defined area in Mesa county in which wine grapes are grown.

(3) "Grape product" means any juice, must concentrate, or extract made from vinifera grapes, true or hybrid, whether or not partially fermented.

(3.5) "Western slope" means the area west of the continental divide, excluding the grand valley viticultural area.

(4) "Wine" means any vinous liquor containing not more than twenty-one percent alcohol by volume and produced in all respects in conformity with the laws of the United States and the regulations of the bureau of alcohol, tobacco, and firearms of the United States department of the treasury or any of its successor agencies.

(5) "Wine-growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(6) "Wine-making" means the ownership and control of or the management of a licensed winery in this state.

Source: L. 90: Entire article added, p. 1598, § 1, effective July 1. **L. 97:** (1.5), (2.5), and (3.5) added, p. 299, § 6, effective July 1. **L. 2007:** (4) amended, p. 2047, § 91, effective June 1.

35-29.5-103. Colorado wine industry development board - creation - members.

(1) There is hereby established a Colorado wine industry development board in the department of agriculture for the purpose of encouraging and promoting viticultural and enological research and experimentation to develop maximum yields and quality from Colorado lands suitable to the production of grapes for commercial wine production, to promote the marketing of wines and wine grapes produced in Colorado, to promote the responsible consumption of all wines, to promote the integration of the Colorado wine industry as a component of the state's tourism program, and to serve as a resource for the entire wine industry of Colorado. The board shall exercise its powers and perform its duties and functions specified by this article under the department of agriculture as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) (a) The board shall consist of nine members appointed by the governor. In making appointments, the governor shall take into consideration any nominations or recommendations made by the wine industry organization in Colorado.

(b) (I) Five of the appointments shall be representatives of licensed wineries in the state. Of such five appointments, one shall be a representative of licensed wineries in the western slope, one shall be a representative of licensed wineries in the grand valley viticultural area, one shall be a representative of licensed wineries in the eastern slope, and two shall be at-large representatives. The appointment of at-large members shall reflect the proportion of fees and excise taxes paid by wineries in each of the three regions. At least one of the winery representatives shall also be a grower.

(II) Two appointments shall be representatives of the wholesale wine distributors in Colorado.

(III) One appointment shall be a representative of wine grape producers.

(IV) One appointment shall be a representative of the retail wine distributors in Colorado.

(c) A representative of the Colorado tourism board, a representative of Colorado state university, and a member of the public shall be invited to serve on the board in an ex officio capacity.

(d) Each member of the board shall be a resident of Colorado.

(e) Each member of the board shall be at least twenty-one years of age.

(3) Except as provided in subsection (4) of this section with respect to initial appointments to the board, members of the board shall serve for terms of four years each to continue in office until a successor is appointed and qualified; except that, in the case of a vacancy on the board, an appointment shall be for the remainder of the unexpired term. No member shall be appointed to consecutive terms; except that any member appointed for less than two years in the case of a vacancy may be appointed upon the expiration of the shorter term to serve a four-year term.

(4) Of the members of the board appointed to terms commencing on and after July 1, 1997, at least one of the representatives from the wholesale wine distributors and one of the representatives from licensed wineries shall be appointed for terms of three years. Thereafter, all appointments except those necessary to fill mid-term vacancies shall be for one four-year term.

(5) Members of the board shall receive no compensation for their service on the board, but shall be entitled to reimbursement for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

Source: L. 90: Entire article added, p. 1599, § 1, effective July 1. L. 97: (2)(a) to (2)(c), (3), and (4) amended, p. 299, § 7, effective July 1.

35-29.5-104. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of wine, wine-growing, wine-making, grape products, or fruit products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of wine, wine-growing, wine-making, grape products, or fruit products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters of trade concerning the wine industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to the carrying out of the purposes of the board as authorized by this article;

(f) Make grants to research agencies for the financing of special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(g) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(h) Cooperate with and enter into contracts with any local, state, or nationwide organization or agency engaged in work or activities similar to those of the board and enter into contracts with such organizations or agencies for carrying on joint programs;

(i) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board to be beneficial to the wine industry of this state and expend funds in connection therewith if such program is compatible with the powers conferred by this article;

(j) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties; and

(k) Enter into contracts for the promotion of wine and for the development of new markets through such promotion.

(2) The board shall promote all wines produced or finished by a licensed Colorado winery.

Source: L. 90: Entire article added, p. 1600, § 1, effective July 1. L. 97: (2) added, p. 301, § 8, effective July 1.

35-29.5-105. Colorado wine industry development fund - use of moneys.

(1) There is hereby created in the state treasury the Colorado wine industry development

fund. The fund shall consist of moneys credited thereto pursuant to section 12-47-503 (1) (b) and (1) (c), C.R.S. All moneys in such fund are hereby continuously appropriated to the board for the expenses of the board in implementing the provisions of this article.

(2) In any fiscal year, the board shall budget from moneys in the fund at least one-third toward research and development and at least one-third toward promotion and marketing of the Colorado wine industry, including any administrative costs associated therewith. Any revenue generated by research may be deducted from the amount budgeted for research.

Source: L. 90: Entire article added, p. 1600, § 1, effective July 1. **L. 97:** (1) and (2) amended, pp. 304, 301, §§ 18, 9, effective July 1.

35-29.5-106. Use of phrase “Colorado Grown” on wine industry labeling. (Repealed)

Source: L. 90: Entire article added, p. 1601, § 1, effective July 1. **L. 97:** Entire section amended, p. 304, § 19, effective July 1. **L. 2005:** Entire section repealed, p. 686, § 4, effective June 1.

ARTICLE 30

Food Control

Cross references: For the “Colorado Food and Drug Act”, see part 4 of article 5 of title 25; for the “Colorado Hazardous Substances Act of 1973”, see part 5 of article 5 of title 25.

35-30-101.	Cooperation with United States.	35-30-102.	Powers of governor.
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35-30-101. Cooperation with United States. The governor is authorized to cooperate with the government of the United States and its agents and representatives in all matters pertaining to the conservation, distribution, or production of food, insofar as he may find it possible to do so.

Source: L. 17: Ex. Sess., p. 3, § 1. **C.L.** § 3699. **CSA:** C. 69, § 47. **CRS 53:** § 7-1-1. **C.R.S. 1963:** § 7-1-1.

35-30-102. Powers of governor. The governor of the state of Colorado is vested with all police and regulatory powers regarding the production, storage, refrigeration, manufacture, distribution, handling, dealing in, or sale of foodstuffs or food products and other necessities of life, whether in the raw state or in manufactured form, or any article used or capable of use as food for man or beast, which are vested in the president or any other executive officer of the United States; but the rules, regulations, and orders promulgated by the governor in the exercise of the power conferred in this section shall not be more drastic than nor in conflict with the rules, regulations, and orders of the president and executive officers of the United States government.

Source: L. 17: Ex. Sess., p. 3, § 2. **C.L.** § 3700. **CSA:** C. 69, § 48. **CRS 53:** § 7-1-2. **C.R.S. 1963:** § 7-1-2.

ARTICLE 31

Destruction of Food Products

Cross references: For the “Colorado Food and Drug Act”, see part 4 of article 5 of title 25; for the “Colorado Hazardous Substances Act of 1973”, see part 5 of article 5 of title 25.

PART 1		35-31-106.	Liberal construction.
PUBLIC ENFORCEMENT		PART 2	
35-31-101.	Destruction of food prohibited.	CIVIL DAMAGES FOR THE PROTECTION OF AGRICULTURAL PRODUCTS	
35-31-102.	Applicable to unmaturred foods.		
35-31-103.	Evidence.		
35-31-104.	Penalty.	35-31-201.	Protection of agricultural prod- ucts - damages - definitions.
35-31-105.	Enforcement.		

PART 1

PUBLIC ENFORCEMENT

35-31-101. Destruction of food prohibited. It is unlawful for any person, firm, partnership, association, or corporation or any servant, agent, employee, or officer thereof to destroy or cause to be destroyed, or to permit to decay or to become unfit for use or consumption, or to take, send, or cause to be transported out of this state so to be destroyed or permitted to decay, or knowingly to make any materially false statement, for the purpose of maintaining prices or establishing higher prices for the same, or for the purpose of limiting or diminishing the quantity thereof available for market, or for the purpose of procuring, or aiding in procuring, or establishing, or maintaining a monopoly in such articles or products, or for the purpose of in any manner restraining trade, any fruits, vegetables, grain, meats, or other articles or products ordinarily grown, raised, produced, or used in any manner or to any extent as food for human beings or for domestic animals.

Source: L. 17: Ex. Sess., p. 39, § 1. **C.L.** § 3692. **CSA:** C. 69, § 41. **CRS 53:** § 7-2-1. **C.R.S. 1963:** § 7-2-1. **L. 94:** Entire section amended, p. 965, § 1, effective July 1.

35-31-102. Applicable to unmaturred foods. This part 1 shall apply to the destruction of unripe or unmaturred food products or articles as well as to the destruction of the same when matured or ready for marketing.

Source: L. 17: Ex. Sess., p. 39, § 2. **C.L.** § 3693. **CSA:** C. 69, § 42. **CRS 53:** § 7-2-2. **C.R.S. 1963:** § 7-2-2. **L. 2002:** Entire section amended, p. 237, § 2, effective April 12.

35-31-103. Evidence. Evidence of the voluntary destruction or of the destruction, if unexplained, of any of the food products or articles mentioned in section 35-31-101, or of the voluntary and willful permitting of the same to decay, or of the taking, sending, or causing of the same to be transported out of this state to be destroyed or permitted to decay shall be prima facie proof of the violation of this part 1.

Source: L. 17: Ex. Sess., p. 40, § 3. **C.L.** § 3694. **CSA:** C. 69, § 43. **CRS 53:** § 7-2-3. **C.R.S. 1963:** § 7-2-3. **L. 2002:** Entire section amended, p. 237, § 3, effective April 12.

35-31-104. Penalty. (1) Any person, whether acting individually or otherwise, in such person's own behalf, or as the agent, employee, servant, director, or officer of any other person, partnership, firm, association, or corporation, or any corporation who violates any of the provisions of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(2) As a condition of any sentence imposed pursuant to subsection (1) of this section, the court shall order in addition to any other penalty, that any person convicted of a violation of this part 1 shall make restitution to any victim of such a violation. The amount and any conditions of such a restitution order shall be determined in the same manner as a restitution order imposed pursuant to the provisions of section 18-1.3-205, C.R.S.

Source: L. 17: Ex. Sess., p. 40, § 4. C.L. § 3695. CSA: C. 69, § 44. CRS 53: § 7-2-4. C.R.S. 1963: § 7-2-4. L. 94: Entire section amended, p. 965, § 2, effective July 1. L. 2002: Entire section amended, p. 237, § 4, effective April 12; (2) amended, p. 1548, § 313, effective October 1.

Editor's note: Amendments to subsection (2) by House Bill 02-1046 and Senate Bill 02-069 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-31-105. Enforcement. It is the duty of the district attorneys in their respective districts and of the attorney general to enforce the provisions of this part 1. It is the duty of all citizens of this state who have knowledge or information of a violation of this part 1 to at once inform against anyone who may have violated the same.

Source: L. 17: Ex. Sess., p. 40, § 5. C.L. § 3696. CSA: C. 69, § 45. CRS 53: § 7-2-5. C.R.S. 1963: § 7-2-5. L. 2002: Entire section amended, p. 238, § 5, effective April 12.

35-31-106. Liberal construction. This part 1 shall be liberally construed to effectuate its purpose of preventing waste and of conserving and protecting the food supply available to the people of the state, to the end that the people may enjoy the benefit of any abundance or oversupply of any such food articles or products that may from time to time arise in any locality or in the state at large.

Source: L. 17: Ex. Sess., p. 40, § 6. C.L. § 3697. CSA: C. 69, § 46. CRS 53: § 7-2-6. C.R.S. 1963: § 7-2-6. L. 2002: Entire section amended, p. 238, § 6, effective April 12.

PART 2

CIVIL DAMAGES FOR THE PROTECTION OF AGRICULTURAL PRODUCTS

35-31-201. Protection of agricultural products - damages - definitions.

(1) (a) Any person who, without the consent of the owner of an agricultural product, exercises control over the agricultural product with the intent to deprive such owner of the agricultural product or who maliciously damages or destroys the agricultural product, or who encourages or conspires with another to do so, shall be liable for damages as described in subsection (2) of this section.

(b) For purposes of this section:

(I) "Agricultural product" means any product of agriculture as defined in section 35-1-102 (1).

(II) "Experimental agricultural product" means any product of agriculture, as defined in section 35-1-102 (1) that is the subject of testing or a product development program being conducted by a private entity, a federal, state, or local government agency, or an educational institution, or that has been developed through such a program.

(2) For a violation of subsection (1) of this section, a court shall award:

- (a) The market value of the experimental agricultural product itself and costs directly related to research, testing, production, replacement, and development of the experimental agricultural product. The court may award treble damages.
- (b) The market value of the agricultural product itself and costs directly related to production and replacement. The court may award treble damages.
- (c) Reasonable attorney fees; and
- (d) Litigation costs.
- (3) The rights and remedies available under this section are in addition to any other rights or remedies otherwise available.

Source: L. 2002: Entire part added, p. 236, § 1, effective April 12.

ARTICLE 32

Farmers’ Chemist for Sugar Factories

35-32-101 to 35-32-107. (Repealed)

Source: L. 2006: Entire article repealed, p. 146, § 26, effective August 7.

Editor’s note: This article was numbered as article 11 of chapter 7, C.R.S. 1963, and was not amended prior to its repeal in 2006. For the text of this article prior to 2006, consult the 2005 Colorado Revised Statutes.

ARTICLE 33

Custom Processing
of Meat Animals

Editor’s note: This article was numbered as article 12 of chapter 7, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

Cross references: For brand inspections, see part 2 of article 43 of this title.

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PART 1

GENERAL PROVISIONS

35-33-101. Short title. This article shall be known and may be cited as the “Custom Processing of Meat Animals Act”.

Source: L. 89: Entire article R&RE, p. 1382, § 1, effective April 12. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 507, § 3, effective April 16.

Editor’s note: This section is similar to former § 35-33-101 as it existed prior to 1989.

ANNOTATION

Law reviews. For article, “Impact of the Uniform Commercial Code on Colorado Law”, see 42 Den. L. Ctr. J. 67 (1965).

35-33-102. Legislative declaration. The general assembly declares that the purpose of this article is to regulate the slaughter and processing of certain animals intended for human consumption. The general assembly finds that the production, processing, and consumption of meat animals plays an important part in the economy of this state and that to maintain the integrity of this industry and to protect the public health and welfare it is essential that the slaughter and processing of these animals occur in a safe, sanitary, and nondeceptive manner. It is therefore necessary to provide for the regulation of the slaughter and processing of meat animals.

Source: L. 89: Entire article R&RE, p. 1382, § 1, effective April 12. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 507, § 4, effective April 16.

35-33-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Adulterated” has the meaning set forth in section 25-5-410, C.R.S.
- (2) “Commission” means the state agricultural commission.
- (3) “Commissioner” means the commissioner of agriculture or his or her authorized agent.
- (4) “Custom processing” means the slaughter or processing, for a fee or other compensation, of meat or meat products of an animal not owned by the person performing the slaughter or processing and not intended for sale by the owner of the animal.
- (5) “Department” means the department of agriculture.
- (6) “Food” means all articles used for food, drink, confectionery, or condiment by humans, whether simple, mixed, or compound, and any substance used as a constituent in the manufacture thereof.

(7) “Inedible meat” means meat or meat products derived from dead, dying, disabled, diseased, or condemned animals or from animals whose meat or meat products are otherwise unsuitable for human consumption. “Inedible meat” includes meat or meat products, regardless of origin, that have deteriorated so far as to be unfit for human consumption.

(8) “Meat or meat products” means carcasses or parts of carcasses derived from any animals used for food.

(9) “Premises” means the back, front, and side yard of property occupied by a custom processing facility; docks and areas where vehicles are loaded or unloaded; driveways, approaches, pens, and alleys; and buildings or portions of buildings that are part of any facility even though not used for custom processing.

(10) “Processing” means the slaughtering, dressing, cutting, preparing, trimming, wrapping, or packaging of an animal or of meat or meat products from an animal.

(11) “Processing facility” means any establishment where meat is slaughtered, dressed, processed, cut, trimmed, wrapped, or packaged for delivery to consumers.

(12) “Sharp freezing facility” means a facility capable of maintaining a temperature of ten degrees below zero Fahrenheit or lower on still air or contact or a temperature of zero degrees Fahrenheit or lower by forced air circulation, within a tolerance of five degrees Fahrenheit for a minimum of twelve hours after fresh food is put in such facility for freezing.

(13) “Sharp frozen” means the process of refrigeration sufficient to reduce every portion of any meat or meat product to a temperature of zero degrees Fahrenheit or less in five hours or less.

(14) “Slaughter” means any process, or the use of any process, including without limitation the process of bleeding, that causes the death of any animal intended for food.

(15) “Uninspected”, in reference to any animal, meat, or meat product, means not inspected and passed by the United States department of agriculture or another authorized government agency.

Source: L. 89: Entire article R&RE, p. 1382, § 1, effective April 12. L. 95: (18) amended, p. 30, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 507, § 5, effective April 16.

Editor’s note: This section is similar to former § 35-33-102 as it existed prior to 1989.

35-33-104. Commissioner of agriculture - powers and duties. (1) The commissioner is hereby authorized to formulate reasonable rules and standards of construction, operation, record-keeping, and sanitation for all custom processing facilities and shall establish rules and standards pertaining to containers, packaging materials, mobile slaughter units, slaughter rooms, processing rooms, chill rooms, storage and locker rooms, sharp freezing facilities, and premises of custom processing facilities, with respect to the service of slaughtering, cutting, preparing, wrapping, and packaging meat and meat products necessary for the proper preservation of food.

(2) It is the duty of the department to enforce the provisions of this article and rules, regulations, and standards established in accordance therewith.

(3) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 511, § 6, effective April 16, 2009.)

(4) (a) The commissioner, upon consent or upon obtaining an administrative search warrant, shall have the right of access to any premises for the purpose of any examination or inspection necessary to enforce this article or the rules promulgated thereunder, including inspection and copying of any relevant records.

(b) The commissioner may administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of books, memoranda, papers, and other documents, articles, or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to

appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(5) The commissioner may, whenever immediate enforcement of any of the provisions of this article is deemed necessary for the protection of the public health or welfare, issue and enforce a written cease-and-desist order to any person found in violation of any of the provisions of this article or the rules promulgated thereunder.

(6) When the commissioner has reasonable cause to believe that any meat or meat product is being held, slaughtered, or processed in violation of this article or the rules promulgated under this article, and when such product endangers the public health, safety, or welfare, he or she may issue and enforce a written retention order, prohibiting any person from moving or otherwise disposing of the retained product in any manner without written permission of the commissioner. Within five days after the issuance of any retention order, the commissioner shall hold a hearing to determine whether the retained product should be condemned or released to the owner. If the product is found to be adulterated, and the product cannot be brought into compliance with this article, the commissioner shall order that the retained product is inedible meat and shall be disposed of in accordance with article 59 of this title.

(7) (Deleted by amendment, L. 95, p. 31, § 2, effective July 1, 1995.)

Source: L. 89: Entire article R&RE, p. 1386, § 1, effective April 12. L. 90: (7) added, p. 333, § 22, effective April 3. L. 95: (1) and (7) amended, p. 31, § 2, effective July 1. L. 2009: (1) and (3) to (6) amended, (SB 09-117), ch. 123, p. 511, § 6, effective April 16.

Editor's note: This section is similar to former §§ 35-33-103 and 35-33-106 as they existed prior to 1989.

Cross references: For rule-making and licensing procedures, see article 4 of title 24.

35-33-105. Injunctive relief. Whenever the commissioner possesses sufficient evidence satisfactory to him or her indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule promulgated under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 89: Entire article R&RE, p. 1387, § 1, effective April 12. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 512, § 7, effective April 16.

35-33-106. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, with any other agency of this state or its political subdivisions, or with any agency of another state to further the implementation of this article, secure uniformity of regulations, prevent duplication of enforcement efforts, and facilitate the sharing of information developed in the investigation of unlawful business practices.

Source: L. 89: Entire article R&RE, p. 1387, § 1, effective April 12.

35-33-107. Exemptions.

(1) Repealed.

(2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 8, effective April 16, 2009.)

(3) Any person who holds an establishment number issued by the United States department of agriculture for purposes of inspection and does not engage in the custom processing of meat animals shall be exempt from the requirements of this article.

(4) Any religious practice involving the ritual slaughter, handling, or preparation of meat animals is exempt from the provisions of this article except section 35-33-203 governing methods of slaughter.

(5) (Deleted by amendment, L. 95, p. 31, § 3, effective July 1, 1995.)

Source: L. 89: Entire article R&RE, p. 1387, § 1, effective April 12. L. 91: (5) added, p. 690, § 67, effective April 20. L. 95: (3) and (5) amended, p. 31, § 3, effective July 1. L. 2007: (1) repealed, p. 1909, § 13, effective July 1. L. 2009: (2) and (3) amended, (SB 09-117), ch. 123, p. 513, § 8, effective April 16.

35-33-108. Operators not warehousemen. (Repealed)

Source: L. 89: Entire article R&RE, p. 1388, § 1, effective April 12. L. 2009: Entire section repealed, (SB 09-117), ch. 123, p. 513, § 9, effective April 16.

Editor's note: This section was similar to former § 35-33-109 as it existed prior to 1989.

PART 2

CONSTRUCTION AND OPERATION OF PROCESSING FACILITIES

35-33-201. Custom processing facilities - operation. (1) Each custom processing facility licensed under this article must be operated and maintained in a manner sufficient to prevent the creation of unsanitary conditions and to ensure that meat or meat products are not adulterated.

(2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(3) All persons coming in contact with meat or meat products shall wear clean garments and a suitable head covering and shall keep their hands clean. No person with infected cuts or a communicable disease shall be allowed to handle meat or meat products.

(4) and (5) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(6) Unpackaged or uncovered meat or meat products shall not be moved through the slaughter, holding, or refuse rooms or areas.

(7) and (8) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(9) (a) Adulterated or inedible meat shall be decharacterized so as to unequivocally preclude its use for human food and shall be disposed of by methods approved by the commissioner.

(b) Decharacterization of adulterated or inedible meat shall be accomplished by freely slashing and covering all exposed surfaces with an edible green dye, charcoal, or such other methods as may be approved by the commissioner.

(10) All meat and meat products resulting from the custom processing or slaughter of uninspected animals:

(a) Shall, as soon as is practicable, be marked or coded with the owner's name and marked "NOT FOR SALE" in letters not less than three-eighths of an inch in height;

(b) Shall, when packaged, be marked or coded with the owner's name, the date of wrapping of the package, and the package contents, and labeled "NOT FOR SALE"; and

(c) Shall be returned to the owner or decharacterized and disposed of by methods approved by the commissioner, except for unclaimed meat from wildlife subject to the jurisdiction of the Colorado division of parks and wildlife, which shall be donated or disposed of in accordance with any applicable state or federal health or wildlife laws.

Source: L. 89: Entire article R&RE, p. 1388, § 1, effective April 12. L. 95: (7) amended, p. 31, § 4, effective July 1. L. 2009: (1), (2), and (4) to (10) amended, (SB 09-117), ch. 123, p. 513, § 10, effective April 16; (1) amended, (SB 09-151), ch. 89, p. 347, § 5, effective July 1.

Editor's note: Amendments to subsection (1) by Senate Bill 09-117 and Senate Bill 09-151 were harmonized.

35-33-202. Record-keeping requirements. (1) (a) Every custom processor shall maintain records of each customer transaction, including, at a minimum:

- (I) The date of the transaction;
 - (II) A description of the meat or meat products processed, including species and quantity;
 - (III) The name and address of the owner; and
 - (IV) Such other information as may be required by rule of the commissioner.
- (b) The records maintained pursuant to paragraph (a) of this subsection (1) shall be kept for at least two years and made available to the commissioner on demand.
- (2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 515, § 11, effective April 16, 2009.)

Source: L. 89: Entire article R&RE, p. 1389, § 1, effective April 12. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 515, § 11, effective April 16.

35-33-203. Slaughter methods. (1) No custom processor shall shackle, hoist, or otherwise bring animals into position for slaughter or shall slaughter or bleed animals except by humane methods.

(2) The commissioner may promulgate rules that conform substantially to the rules of the secretary of agriculture of the United States pursuant to the federal "Humane Methods of Slaughter Act of 1958", as amended; but the use of a manually operated hammer, sledge, or poleax shall not be permitted.

Source: L. 89: Entire article R&RE, p. 1389, § 1, effective April 12. L. 2006: (2) amended, p. 1507, § 56, effective June 1. L. 2009: Entire section amended, (SB 09-117), ch. 123, p. 515, § 12, effective April 16.

Cross references: For the federal "Humane Methods of Slaughter Act of 1958", see Pub.L. 85-765, codified at 7 U.S.C. § 1901 et seq.

35-33-203.5. Freezing prior to delivery. Unless otherwise requested by the owner, all meat or meat products shall be sharp frozen before delivery.

Source: L. 2009: Entire section added, (SB 09-117), ch. 123, p. 516, § 14, effective April 16.

35-33-204. Sale of adulterated or diseased meat. (Repealed)

Source: L. 89: Entire article R&RE, p. 1389, § 1, effective April 12. L. 95: Entire section amended, p. 31, § 5, effective July 1. L. 2002: (2) amended, p. 1548, § 314, effective October 1. L. 2009: Entire section repealed, (SB 09-117), ch. 123, p. 515, § 13, effective April 16.

35-33-205. Repeal of part. (Repealed)

Source: L. 91: Entire section added, p. 690, § 68, effective April 20. L. 95: Entire section repealed, p. 32, § 6, effective July 1.

35-33-206. License required - application - inspection - issuance. (1) Any person who desires to operate a custom processing facility shall first obtain a license from the department. A separate license shall be required for each custom processing facility. The application shall be in writing on forms supplied by the department, shall set forth such information as may be required by the department, and shall be accompanied by any required fees.

(2) Upon the applicant's submission of an application for a license and payment of the required fees, the department shall inspect facilities and premises at the location to be licensed and, if it finds that the equipment, facilities, surrounding premises, and operation of such establishment comply with this article and the rules established pursuant thereto, the department shall issue a license to operate unless the department finds that there are grounds for denial or refusal to renew a license pursuant to section 35-33-208.

(3) The license shall be valid for the period from the date of issuance until the expiration date established by the commissioner by rule and, except for good cause shown, shall be renewed annually thereafter.

(4) A license shall not be transferable to a new owner or location.

(5) Any person who operates a custom processing facility without a valid license therefor commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2009: Entire section added, (SB 09-117), ch. 123, p. 516, § 14, effective April 16.

35-33-207. License fees. (1) The fee for each license under this article shall be established by the commission. There shall be no reduction of a license fee for any fractional part of a year. The fee schedule shall cover all direct and indirect costs associated with the licensing, inspection, and regulation of custom processors.

(2) Any person who fails to renew a license on or before the expiration date of the license shall pay a late fee, as established by the commission, in addition to the license fee.

(3) All fees collected pursuant to this section shall be deposited in the state treasury and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 2009: Entire section added, (SB 09-117), ch. 123, p. 516, § 14, effective April 16.

35-33-208. Disciplinary actions - grounds. (1) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, refuse to renew, or place on probation the license of any applicant or licensee who:

(a) Makes a false statement or misrepresentation on an application for a license or renewal;

(b) Has had a previous license or any equivalent authorization to engage in activities regulated under this article revoked, suspended, or denied by any authority authorized to grant such license or authorization in this or any other state;

(c) Has failed to comply with or violated any provision of this article or any rule promulgated by the commissioner pursuant to this article; or

(d) Fails to obey any lawful order of the commissioner.

Source: L. 2009: Entire section added, (SB 09-117), ch. 123, p. 517, § 14, effective April 16.

PART 3

ADVERTISING AND SALE

35-33-301 to 35-33-305. (Repealed)

Source: **L. 2009:** Entire part repealed, (SB 09-117), ch. 123, p. 517, § 15, effective April 16.

Editor's note: This article was repealed and reenacted in 1989, and this part 3 was subsequently repealed in 2009. For amendments to this part 3 prior to its repeal in 2009, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading.

PART 4

LICENSES - FEES - PENALTIES

35-33-401. License required - application. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1392, § 1, effective April 12. **L. 2002:** (3) amended, p. 1549, § 316, effective October 1. **L. 2009:** Entire section repealed, (SB 09-117), ch. 123, p. 517, § 16, effective April 16.

Editor's note: This section was similar to former §§ 35-33-104 and 35-33-107 as they existed prior to 1989.

35-33-402. Inspection - issuance of license. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1392, § 1, effective April 12. **L. 2009:** Entire section repealed, (SB 09-117), ch. 123, p. 517, § 16, effective April 16.

35-33-403. License fees - evidence of financial responsibility. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1392, § 1, effective April 12. **L. 2003:** (1) and (2) amended, p. 1734, § 16, effective May 14. **L. 2005:** (1) and (2) amended, p. 1274, § 15, effective July 1. **L. 2007:** (1) and (2) amended, p. 1910, § 14, effective July 1. **L. 2009:** Entire section repealed, (SB 09-117), ch. 123, p. 517, § 16, effective April 16.

Editor's note: This section was similar to former § 35-33-105 as it existed prior to 1989.

35-33-404. License - denial - suspension - revocation. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1393, § 1, effective April 12. **L. 2009:** Entire section repealed, (SB 09-117), ch. 123, p. 517, § 16, effective April 16.

35-33-405. Violations - civil penalties - disposition. (1) In addition to the criminal penalty prescribed in section 35-33-406, any person who violates this article or any rule promulgated under this article shall also be subject to a civil penalty of not more than seven hundred fifty dollars per violation for each day of violation.

(2) Any person who violates this article or any rule promulgated under this article is subject to a civil penalty, as determined by the commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed seven hundred fifty dollars per violation; except that such penalty may be doubled if it is determined, after notice and an

opportunity for hearing, that the person has violated the provision or rule for the second time. Each day the violation occurs shall constitute a separate violation.

(3) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(4) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(5) Before imposing any civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the business.

(6) Any penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: **L. 89:** Entire article R&RE, p. 1393, § 1, effective April 12. **L. 90:** (1) amended, p. 1848, § 47, effective May 31. **L. 2003:** (3) amended, p. 1734, § 17, effective May 14. **L. 2005:** (3) amended, p. 1274, § 16, effective July 1. **L. 2007:** (3) amended, p. 1910, § 15, effective July 1. **L. 2009:** Entire section amended, (SB 09-117), ch. 123, p. 517, § 17, effective April 16.

Editor’s note: This section is similar to former § 35-33-108 as it existed prior to 1989.

35-33-406. Violations - criminal penalty. Any person who violates this article or any rule promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 89:** Entire article R&RE, p. 1394, § 1, effective April 12. **L. 2002:** Entire section amended, p. 1549, § 317, effective October 1. **L. 2009:** Entire section amended, (SB 09-117), ch. 123, p. 518, § 18, effective April 16.

Editor’s note: This section is similar to former § 35-33-108 as it existed prior to 1989.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-33-407. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 91:** Entire section added, p. 690, § 69, effective April 20. **L. 95:** Entire section amended, p. 32, § 7, effective July 1. **L. 2004:** Entire section amended, p. 349, § 19, effective July 1. **L. 2009:** Entire section amended, (SB 09-117), ch. 123, p. 518, § 19, effective April 16.

ARTICLE 33.5

Sale of Meat

PART 1		35-33.5-105.	Commissioner of agriculture - powers and duties.
GENERAL PROVISIONS		35-33.5-106.	Injunctive relief.
35-33.5-101.	Short title.	PART 2	
35-33.5-102.	Legislative declaration.	SALES PRACTICES	
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35-33.5-202.	Advertisements.		inspection - issuance.
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35-33.5-204.	Limitations on contract - delivery.	35-33.5-303.	Evidence of financial responsibility - action on bond.
35-33.5-205.	Freezing prior to sale.	35-33.5-304.	Disciplinary actions - grounds.
		35-33.5-305.	Civil penalties - disposition.
		35-33.5-306.	Criminal penalties.
		35-33.5-307.	Repeal of article.

PART 3

LICENSES - FEES - PENALTIES

35-33.5-301. License required - application -

PART 1

GENERAL PROVISIONS

35-33.5-101. Short title. This article shall be known and may be cited as the "Sale of Meat Act".

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 518, § 20, effective April 16.

35-33.5-102. Legislative declaration. The general assembly declares that the purpose of this article is to regulate the sale of meat intended for human consumption. The general assembly finds that the sale of meat plays an important part in the economy of this state and that to maintain the integrity of this industry and to protect the public welfare it is essential that the sale of meat occurs in a nondeceptive manner. It is therefore necessary to provide for the regulation of the sale of meat.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 518, § 20, effective April 16.

35-33.5-103. Scope - applicability. (1) This article shall apply to all sales of regulated products or advertisements containing an offer to sell regulated products:

- (a) In bulk or as a bundle; or
- (b) On credit, or subject to an installment or other payment plan or as part of a home food service plan including cut and packaged meats intended for storage in a home freezer or other cold storage facility.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 519, § 20, effective April 16.

35-33.5-104. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Advertisement" means a communication, by or through any medium, intended to solicit or promote the sale of any product or service:
 - (a) Regulated by this article;
 - (b) Produced or provided by any person regulated by this article; or
 - (c) The production or provision of which is regulated by this article.
- (2) "Bulk meat" means meat consisting of whole carcasses, or parts thereof, of commercial size and requiring further cutting into cuts of retail size for individual consumption.
- (3) "Bundle" means individually wrapped cuts of meat packaged together for sale as a single unit.
- (4) "Commission" means the state agricultural commission.
- (5) "Commissioner" means the commissioner of agriculture or his or her authorized agent.
- (6) "Department" means the department of agriculture.

(7) “Food” and “food products” means all articles used for food, drink, confectionery, or condiment by humans, whether simple, mixed, or compound, and any substance used as a constituent in the manufacture thereof.

(8) “Home food service plan” means an arrangement for the sale and delivery of food to a consumer, whether or not the consumer is required to pay a membership fee or similar charge and whether or not any nonfood item, including durable consumer goods or services, is included with the food, if:

(a) The arrangement is made by means of a personal meeting at the consumer’s home; and

(b) The food consists of or includes any meat or meat products.

(9) “Meat or meat products” means carcasses or parts of carcasses derived from any animals used for food.

(10) “Regulated product” means any meat or meat products sold as bulk meat or in a bundle; any food that is sold or given away as an incentive or bonus connected with the sale of meat or meat products; any food product intended for human consumption that is sold or given away as a part of any home food service plan.

(11) “Represent” or “representation” refers to the use of any oral or written statement, advertisement, label, display, picture, illustration, or sample.

(12) “Sharp frozen” means the process of refrigeration sufficient to reduce every portion of any meat or meat product to a temperature of zero degrees Fahrenheit or less in five hours or less.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 519, § 20, effective April 16.

35-33.5-105. Commissioner of agriculture - powers and duties. (1) The commissioner is hereby authorized to establish rules and standards pertaining to the sale of meat or meat products and for home food service plans to the end of protecting the public from deception, fraud, or unethical sales practices and record-keeping requirements.

(2) It is the duty of the department to enforce this article and the rules and standards established in accordance with this article.

(3) (a) The commissioner, upon consent or upon obtaining an administrative search warrant, shall have the right of access to any premises for the purpose of any examination or inspection necessary to enforce this article or the rules promulgated thereunder, including inspection and copying of any relevant records.

(b) The commissioner may administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of books, memoranda, papers, and other documents, articles, or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(4) The commissioner may, whenever immediate enforcement of any of the provisions of this article is deemed necessary for the protection of the public health or welfare, issue and enforce a written cease-and-desist order with respect to any person found in violation of any of the provisions of this article or the rules promulgated thereunder.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 520, § 20, effective April 16.

35-33.5-106. Injunctive relief. Whenever the commissioner possesses sufficient evidence satisfactory to him or her indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule promulgated under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice

in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 521, § 20, effective April 16.

PART 2

SALES PRACTICES

35-33.5-201. Method of sale. All regulated products shall be sold, as specified in rules of the commissioner.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 521, § 20, effective April 16.

35-33.5-202. Advertisements. (1) No advertisement shall be subject to change without notice unless so stated in the advertisement.

(2) Any comparison with products other than those advertised shall be with products of the same grade or quality.

(3) The price of any bulk meat shall be quoted per pound.

(4) Any service charge incidental to the preparation of a regulated product for sale that is not included in the price per pound of the product shall be clearly identified as an extra and separate charge. This shall apply, without limitation, to any membership fee or any charge or fee for cutting, freezing, wrapping, storage, or delivery.

(5) No advertisement shall represent that any person employed by or acting for or on behalf of the seller is a nutritionist or home economist unless such person has obtained any applicable government certification or license, or, where no certification or license is applicable, has completed specialized training in such fields or is otherwise technically qualified by experience or training.

(6) No advertisement shall represent that any type or quantity of any regulated product offered for sale is sufficient to meet any nutritional or dietary requirements without disclosing the source of the standards according to which such regulated product is determined to be sufficient.

(7) No advertisement shall represent that any regulated product or service has been approved by any better business bureau, chamber of commerce, service club, financial institution, government agency, or any other civic organization or any official or employee thereof or that the seller is a member of such organization, unless the seller has written documentation to substantiate the claim, which documentation shall be made available upon demand to any buyer or to any agent of the department.

(8) Any representation in any advertisement of the grade or yield of any regulated product offered for sale shall conform to United States department of agriculture standards for the designation of meat grades. The designation "U.S." shall not be used with reference to any product not graded by the United States department of agriculture; except that the term "U.S. Inspected" may be used when the product has been so inspected.

(9) Any advertisement offering to sell meat as a "side", "half", "quarter", or similar unit shall contain the following warning in capital letters: "Meat sold by weight determined before processing. Actual yield will be less."

(10) Any advertisement offering for sale a "side", "quarter", or "half" of beef and containing a list of cuts purportedly from such "side", "quarter", or "half" shall list only cuts that are anatomically correct components of the indicated part of the carcass.

(11) A person shall not use an advertisement that constitutes all or part of a deceptive trade practice as defined in section 6-1-105 (1) (e), (1) (i), (1) (j), (1) (l), or (1) (n), C.R.S., in connection with regulated products or services subject to this article.

(12) Any person violating this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(13) Nothing in this section shall be construed to limit or preempt the application of article 1 of title 6, C.R.S.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 521, § 20, effective April 16.

35-33.5-203. Documentation of sales. (1) Any sale of bulk meat or a home food service plan shall be documented in a written contract, which shall contain, at a minimum:

- (a) The full name and address of the seller;
 - (b) The name and address of the buyer;
 - (c) The date of the sale;
 - (d) Weight and pricing information as required by rule;
 - (e) The total price to be paid by the buyer, including, without limitation, any applicable charges for cutting, freezing, wrapping, packaging, delivery, freezer or locker rental, insurance, and any interest, finance charge, service charge, or membership charge;
 - (f) The total weight of all regulated products, including separately itemized weights for each regulated product;
 - (g) A separate itemization of all nonfood charges;
 - (h) The make, model number, and cubic-foot capacity of any locker, freezer, or other appliance or facility sold or rented under the contract;
 - (i) The signature of the buyer; and
 - (j) Such other information as may be required by rule of the commissioner.
- (2) Every person who sells bulk meat or a home food service plan shall maintain a copy of each contract required by subsection (1) of this section for at least two years.
- (3) Any sale of a regulated product not subject to subsection (1) of this section shall be documented in a writing that contains, at a minimum:
- (a) The full name and address of the seller;
 - (b) The total price paid, or to be paid, by the buyer;
 - (c) Weight and pricing information as required by rule;
 - (d) A separate itemization of all nonfood charges;
 - (e) Such other information as may be required by rule of the commissioner; and
 - (f) The date of the sale.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 522, § 20, effective April 16.

35-33.5-204. Limitations on contract - delivery. (1) Upon execution of a sales contract, the seller shall deliver to the buyer a full and complete copy of such contract together with copies of any warranty, rental, insurance, or other collateral agreement incorporated by reference into the sales contract and a complete written statement of the rules, terms, or conditions applicable to any membership acquired or to any gift or prize for which the buyer has qualified or may in the future qualify by virtue of his or her execution of the sales contract.

(2) No contract shall use the terms “side”, “quarter”, “half”, or any similar term to describe meat delivered under the contract unless all the meat delivered is from the indicated portion of the same carcass or the contract expressly provides that meat purchased in such a unit will not be cut from the same carcass. Any meat delivered as a “side”, “quarter”, “half”, or similar unit, if not from the same carcass, shall all be of the same grade or quality.

(3) No contract shall contain any provision whereby the buyer agrees to waive any warranties, rights, or defenses he or she may have under article 2 of title 4, C.R.S., or the “Uniform Consumer Credit Code”, articles 1 to 9 of title 5, C.R.S.

(4) No provision of this section shall be construed to relieve the seller of any obligation he or she may otherwise have under article 1 of title 6, C.R.S.

(5) Any contract made in violation of this article shall be unenforceable against the buyer.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 523, § 20, effective April 16.

35-33.5-205. Freezing prior to sale. Unless otherwise requested by the purchaser, all regulated products shall be sharp frozen before delivery.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 524, § 20, effective April 16.

PART 3

LICENSES - FEES - PENALTIES

35-33.5-301. License required - application - inspection - issuance. (1) A person who desires to sell a home food service plan shall first obtain a license from the department. A separate license shall be required for each business location. The application shall be in writing on forms supplied by the department, shall set forth such information as may be required by the department, and shall be accompanied by any required fees.

(2) Upon the applicant's submission of an application for a license, or for the renewal thereof, evidence of the bond required by section 35-33.5-303, and payment of the required fees, the department shall review the applicant's operations and, if it finds that such operations comply with this article and the rules established pursuant thereto, the department shall issue a license to operate unless the department finds that there are grounds for denial or refusal to renew a license pursuant to section 35-33.5-304.

(3) The license shall be valid for the period from the date of issuance until the expiration date established by the commissioner by rule and, except for good cause shown, shall be renewed annually thereafter.

(4) A license shall not be transferable to a new owner or location.

(5) Any person who sells a home food service plan without a valid license therefor commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 524, § 20, effective April 16.

35-33.5-302. License fees. (1) The fee for each license under this part 3 shall be established by the commission. There shall be no reduction of a license fee for any fractional part of a year. The fee schedule shall cover all direct and indirect costs associated with the licensing, inspection, and regulation of sellers of home food service plans.

(2) Any person who fails to renew a license on or before the expiration date of the license shall pay a late fee, as established by the commission, in addition to the license fee.

(3) All fees collected pursuant to this section shall be deposited in the state treasury and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 524, § 20, effective April 16.

35-33.5-303. Evidence of financial responsibility - action on bond. (1) Before any license is issued to the seller of a home food service plan, or before the reinstatement of any license suspended or revoked for violations of this article or of a rule or order issued pursuant to this article resulting in financial loss suffered by any buyer, the applicant shall execute and deliver to the commissioner a surety bond in an amount determined by the commissioner, not to exceed fifty thousand dollars. The bond shall be executed by the

applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be conditioned upon compliance with all requirements of this article, the faithful fulfillment of all contracts, and the rendering of any service in connection with the sale, advertising, or soliciting of any home food service plan. The bond shall be to the state of Colorado in favor of every consumer purchasing a home food service plan.

(2) If, after a hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner determines that a bonded licensee has violated any provision of this article or of a rule or order issued pursuant to this article, the commissioner may demand payment on the bond on behalf of any consumer injured as a result of such violation. If the surety company refuses to pay upon such demand, the commissioner shall bring an action on the bond on behalf of the consumer.

(3) Any consumer purchasing a home food service plan and claiming to be injured by the fraud, deceit, or willful negligence of any bonded licensee or by the licensee's failure to comply with any provision of this article or of a rule or order issued pursuant to this article may, with the prior written consent of the commissioner, bring an action upon said bond against both the principal and surety in any court of competent jurisdiction to recover damages caused thereby. Upon the commencement of any such action, the commissioner may require the filing of a new bond.

(4) Whenever the commissioner determines that a previously approved bond is insufficient, the commissioner may require the licensee to execute and deliver an additional bond. Failure by the licensee to comply with such order within thirty days shall constitute grounds for the suspension or revocation of the license.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 525, § 20, effective April 16.

35-33.5-304. Disciplinary actions - grounds. (1) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, refuse to renew, or place on probation the license of any applicant or licensee who:

(a) Makes a false statement or misrepresentation on an application for a license or renewal;

(b) Has had a previous license or any equivalent authorization to engage in activities regulated under this part 3 revoked, suspended, or denied by any authority authorized to grant such license or authorization in this or any other state;

(c) Has failed to comply with or violated any provision of this article or any rule promulgated by the commissioner pursuant to this article;

(d) Has allowed any bond required by section 35-33.5-303 to expire, lapse, or be cancelled and has failed to provide evidence of a new bond within ten days; or

(e) Fails to obey any lawful order of the commissioner.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 525, § 20, effective April 16.

35-33.5-305. Civil penalties - disposition. (1) Any person who violates any provision of this article or of a rule promulgated pursuant to this article is subject to a civil penalty, as determined by the commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed seven hundred fifty dollars per violation; except that this amount may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the statute or rule for the second time. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty assessed under this section or if any person fails to pay all or part of such civil penalty, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing a civil penalty upon a person under this section, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the person's business.

(5) Penalties collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 526, § 20, effective April 16.

35-33.5-306. Criminal penalties. Any person who violates this article or any rule promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 526, § 20, effective April 16.

35-33.5-307. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2009: Entire article added, (SB 09-117), ch. 123, p. 526, § 20, effective April 16.

ARTICLE 34

Frozen Desserts

35-34-101 to 35-34-112. (Repealed)

Source: L. 85: Entire article repealed, p. 902, § 4, effective April 5.

Editor's note: This article was numbered as article 15 of chapter 7, C.R.S. 1963, and was not amended prior to its repeal in 1985. For the text of this article prior to 1985, consult the Colorado Statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning frozen desserts, see part 3 of article 5.5 of title 25.

ARTICLE 35

Grain Inspection

35-35-101.	System of grading.	35-35-104.	Penalty.
35-35-102.	Selling grain by sample.	35-35-105.	Right of action for damages.
35-35-103.	Screenings delivered to seller.		

35-35-101. System of grading. Any person, firm, company, association, or corporation, foreign or domestic, who makes a business of buying grain, wheat, corn, barley, oats, or rye from the producer shall be required to buy the same on the basis of federal grades, and the

purchasing agent of each person, firm, company, association, or corporation dealing in grain shall inspect and grade all grain purchased in accordance with the federal grades in effect at the time of said inspection.

Source: L. 19: p. 420, § 1. C.L. § 3683. CSA: C. 69, § 32. CRS 53: § 7-15-1. L. 62: p. 129, § 1. C.R.S. 1963: § 7-13-1.

35-35-102. Selling grain by sample. When grain is offered for sale by sample and when it can be agreed between the buyer and seller as to value, it shall be lawful to purchase or sell grain by sample.

Source: L. 19: p. 422, § 6. C.L. § 3688. CSA: C. 69, § 37. CRS 53: § 7-15-6. C.R.S. 1963: § 7-13-2.

35-35-103. Screenings delivered to seller. Every corporation, partnership, association, or individual who engages in the business of buying, selling, and milling wheat, oats, rye, barley, or other cereal products and who screens such products, unless otherwise agreed upon between the seller and purchaser, shall deliver all such screenings to the seller of such cereal products free of charge upon request being made therefor by such seller.

Source: L. 19: p. 423, § 1. C.L. § 3689. CSA: C. 69, § 38. CRS 53: § 7-15-7. C.R.S. 1963: § 7-13-3.

35-35-104. Penalty. Any corporation, partnership, association, or individual violating any of the provisions of this article, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

Source: L. 19: p. 423, § 2. C.L. § 3690. CSA: C. 69, § 39. CRS 53: § 7-15-8. L. 62: p. 129, § 2. C.R.S. 1963: § 7-13-4.

35-35-105. Right of action for damages. In addition to the penalties provided for in section 35-35-104, a right of action is hereby given to every such seller of cereal products, as damages from any purchaser of such cereal products, the value of all such screenings so wrongfully detained by any such corporation, partnership, association, or individual.

Source: L. 19: p. 424, § 3. C.L. § 3691. CSA: C. 69, § 40. CRS 53: § 7-15-9. C.R.S. 1963: § 7-13-5.

ARTICLE 36

Grain Warehouses

35-36-101 to 35-36-119. (Repealed)

Source: L. 76: Entire article repealed, p. 404, § 12, effective July 1.

Editor's note: This article was numbered as article 14 of chapter 7, C.R.S. 1963, and was not amended prior to its repeal in 1976. For the text of this article prior to 1985, consult the Colorado Statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 38

Farm Equipment Dealerships

Editor's note: This article was added in 1984 and was not amended prior to 1995. The provisions of this article were repealed and reenacted in 1995, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For the text of this article prior to 1995, consult the statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

35-38-101.	Short title.	35-38-107.	Repurchase - title - security interest.
35-38-102.	Definitions.	35-38-108.	Death or incapacitation of equipment dealer.
35-38-103.	Prohibited acts.	35-38-109.	Cause of action - remedies.
35-38-104.	Dealer agreement cancellation.	35-38-110.	Current agreements - effect of law - void provisions.
35-38-105.	Surplus parts inventory - credits.	35-38-111.	Warranties.
35-38-106.	Cancellation of contract - repurchase of inventory.		

35-38-101. Short title. This article shall be known and may be cited as the "Colorado Farm Equipment Fair Dealership Act".

Source: L. 95: Entire article R&RE, p. 363, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-101 as it existed prior to 1995.

35-38-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Dealer agreement" means an oral or written contract or agreement of definite or indefinite duration between a supplier and an equipment dealer that prescribes the rights and obligations of each party with respect to the purchase or sale of equipment.

(2) (a) "Equipment" means a machine designed for or adapted and used for agriculture, horticulture, floriculture, livestock, grazing, light industrial, utility, and outdoor power equipment. "Equipment" does not include earthmoving and heavy construction equipment, mining equipment, or forestry equipment.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(3) "Equipment dealer" or "dealer" means any person, partnership, corporation, association, or other form of business enterprise that is primarily engaged in the retail sale of equipment.

(4) "Net cost" means the price the equipment dealer pays to the supplier for equipment, including the freight costs from the supplier's location to the equipment dealer's location, minus all applicable discounts allowed by the supplier.

(5) "Net price" means the price listed for repair parts in the supplier's price list or catalog in effect at the time the dealer's agreement terminates.

(6) "Superseded part" means any part with a discontinued part number already purchased from the supplier that has not been modified or improved and can perform the same function as a part currently available for purchase from such supplier's stock.

(7) (a) "Supplier" means any person, partnership, corporation, association, or other business enterprise that is engaged in the manufacturing, assembly, or wholesale institution of equipment or repair parts, or both, and includes any successor in interest. "Supplier" includes a purchaser of assets or a surviving corporation that results from a merger, liquidation, or reorganization of the original supplier.

(b) "Supplier" does not mean any person, partnership, corporation, association, or other business enterprise, that is not otherwise a supplier, that engages in the manufacture or wholesaler distribution of nonmoving parts that are not equipment but that may be used to enhance the operation or comfort of equipment.

Source: L. 95: Entire article R&RE, p. 363, § 1, effective July 1. L. 2005: (2) amended, p. 351, § 12, effective August 8.

Editor's note: This section is similar to former § 35-38-102 as it existed prior to 1995.

35-38-103. Prohibited acts. (1) It is a violation of this article for a supplier to:

(a) Coerce or compel an equipment dealer to enter into a written or oral agreement that is supplementary to an existing dealer agreement with the supplier unless that agreement is imposed on all other similarly situated dealers in this state;

(b) (I) Refuse to deliver, within a reasonable time after receipt of an order, equipment covered by the dealer agreement specifically represented by the supplier to be available for immediate delivery, if such equipment is available in reasonable quantities.

(II) This paragraph (b) shall not apply if failure is due to any of the following:

(A) Restrictions on the extension of credit by the supplier to the equipment dealer;

(B) A breach of or a default under the agreement by the equipment dealer;

(C) An act of God;

(D) Work stoppage or delay due to a strike or labor difficulty;

(E) A bona fide shortage of materials; or

(F) Other causes over which the supplier has no control.

(c) Terminate, cancel, or fail to renew a dealer agreement or to substantially change the competitive circumstances of the dealer agreement without cause;

(d) Require as a condition of renewal or extension of a dealer agreement that the dealer complete substantial renovation to the dealer's place of business or to acquire new or additional space to serve as the dealer's place of business unless the supplier provides:

(I) At least one year's written notice of such condition;

(II) All of the grounds supporting this condition; and

(III) A reasonable period of time in which to complete the renovation or acquisition after the one-year notice period expires;

(e) (I) Discriminate in the prices charged for equipment of like grade and quantity sold by the supplier to similarly situated dealers in this state.

(II) Nothing in this paragraph (e) shall be construed to:

(A) Prevent the use of differentials that result from the differing quantities in which equipment is sold or delivered and does not prevent a supplier from offering a lower price in order to meet a competitor's equally low price or the services or facilities furnished by a competitor; or

(B) Apply to sales to an equipment dealer for resale to a unit or agency of the United States government, this state or its political subdivisions, a major fleet account, or an organization for testing or demonstration purposes.

(f) Prevent, by any means, an equipment dealer from changing the capital structure of the equipment dealership or the means by which the dealership is financed, if the dealer meets reasonable capital standards imposed by the supplier or as otherwise agreed to between the dealer and the supplier at all times and this change does not cause a change of the controlling interest in the executive management or the board of directors or of a guarantor of the dealership;

(g) (I) Prevent, by any means, an equipment dealer or any officer, member, partner, or stockholder of a dealer from selling or transferring any part of the interest of the officer, member, partner, or stockholder to any other person.

(II) No dealer, officer, partner, member, or stockholder may sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier.

(III) If a supplier determines that the designated transferee is not acceptable, the supplier shall provide the dealer with written notice of the supplier's objection and the specific reasons for withholding its consent.

(h) Require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from complying with this article;

(i) (I) Withhold reasonable consent to the transfer of the equipment dealer's interest in the dealership to a member of the dealer's or the principal owner's family, if such equipment dealer or the principal owner of the dealership dies and the family member meets the reasonable financial, business, ability, experience, and character standards of the supplier.

(II) If the supplier determines that a family member does not meet the supplier's standards, the supplier shall provide the dealer's representative with written notice of the

supplier's specific objections. A supplier has ninety days to consider a request to make a transfer.

(III) For the purposes of this paragraph (i), "family member" means a spouse, parent, sibling, child, stepchild, son-in-law, or daughter-in-law and any lineal descendant and includes an adopted child and any lineal descendant of such child.

(IV) Notwithstanding subparagraph (I) of this paragraph (i), if a supplier and dealer have executed an agreement concerning succession rights before the dealer's death and that agreement has not been revoked or otherwise terminated by either party, such agreement shall control the terms of succession.

(2) Notwithstanding paragraphs (g) and (i) of subsection (1) of this section, a supplier may withhold consent to a transfer of interest in a dealership if the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the dealer. The supplier has the burden of demonstrating this fact.

Source: L. 95: Entire article R&RE, p. 364, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-107 as it existed prior to 1995.

35-38-104. Dealer agreement cancellation. (1) (a) Unless one or more of the provisions found in subparagraphs (I) to (X) of paragraph (b) of subsection (2) of this section apply, a supplier shall give an equipment dealer one hundred eighty days written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or to change the competitive circumstances of such agreement.

(b) (I) Notice sent pursuant to paragraph (a) of this subsection (1) shall state the reasons for termination, cancellation, or nonrenewal and state that the dealer has one hundred eighty days in which to cure any claimed deficiency.

(II) If the dealer cures the deficiency to the supplier's satisfaction within the one-hundred-eighty-day period, the supplier may not terminate, cancel, refuse to renew, or change the competitive circumstances of the agreement for the reasons specified in the notice. The terms of the agreement shall not expire and the supplier shall not change the competitive circumstances of the agreement before the end of the one-hundred-eighty-day period without the dealer's written consent.

(2) (a) A supplier, either directly or through an agent, shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without cause.

(b) For purposes of this subsection (2), "cause" means when a dealer:

(I) Fails to comply with the terms of the agreement if these requirements are not different from those imposed on other similarly situated dealers in this state;

(II) Transfers a controlling ownership interest in the dealership without the supplier's consent; except that the supplier shall not withhold consent without good reason;

(III) Makes a material misrepresentation or falsification of a record;

(IV) Files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against him or her that has not been discharged within the sixty-day period after it was filed;

(V) Is insolvent or in receivership;

(VI) Pleads guilty to or is convicted of a felony;

(VII) Fails to operate in the normal course of business for seven consecutive business days or terminates the business;

(VIII) Relocates or establishes a new or additional equipment dealer's place of business, representing the same supplier, without the supplier's consent;

(IX) Fails to satisfy a payment obligation as it comes due and payable to the supplier;

(X) Fails to promptly account to the supplier for any proceeds from the sale of equipment or to hold such proceeds in trust for the supplier's benefit;

(XI) Consistently engages in business practices that are detrimental to the consumer or the supplier, including use of excessive pricing or misleading advertising or failing to provide service and replacement parts or perform warranty obligations;

(XII) Consistently fails to meet the suppliers market penetration requirements based on available record information and after receiving notice from the supplier of the supplier's requirements;

(XIII) Consistently fails to meet building and housekeeping requirements;

(XIV) Consistently fails to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(XV) Consistently fails to comply with the applicable licensing laws pertaining to the products and services the dealer represents for and on the supplier's behalf.

Source: L. 95: Entire article R&RE, p. 366, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-103 as it existed prior to 1995.

35-38-105. Surplus parts inventory - credits. (1) (a) Unless this section is specifically waived in writing by the dealer, a supplier shall allow a dealer to periodically, but no less than once every twelve months, return a portion of the dealer's surplus parts inventory for credit.

(b) The supplier shall notify the dealer of a time period during which a dealer may submit the dealer's surplus parts list and return inventory. A supplier may stagger return periods for its dealers.

(2) If a supplier has not notified its dealer of a specific time period for returning surplus parts within the preceding twelve-month period, it shall allow the dealer to return surplus parts within sixty days of receiving the dealer's request to make such return.

(3) (a) A supplier shall allow surplus-parts return on a dollar value of parts equal to ten percent of the total dollar value of all parts purchased by the dealer from the supplier during either the twelve-month period immediately preceding the supplier's notification to the dealer of the supplier's return program or, if subsection (2) of this section applies, the month the dealer makes a return request.

(b) The dealer may elect to return a dollar value of the surplus parts equal to less than ten percent of the total dollar value of the parts the dealer purchased during the preceding twelve months.

(4) A dealer may not return obsolete parts; except that a dealer may return a part for credit if such part is found in the supplier's current returnable parts list or any superseded part that is not the subject of the supplier's parts return program as of the date of termination.

(5) A dealer shall return only new and unused parts to the supplier of such parts.

(6) The minimum credit allowed for returned parts is ninety-five percent of the net price as listed in the supplier's current returnable parts list as of the date that the supplier provides notice of its return program or, if subsection (2) of this section applies, the date that the dealer submits a request for return.

(7) A supplier shall issue credit within ninety days after receiving a return part.

(8) Nothing in this section shall be construed to prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discounted incident to the dealer's purchase of equipment.

Source: L. 95: Entire article R&RE, p. 368, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-104 as it existed prior to 1995.

35-38-106. Cancellation of contract - repurchase of inventory. (1) If a dealer agreement is canceled or not renewed by either party or by mutual consent, the supplier shall repurchase the dealer's remaining inventory and any specific data processing hardware and software that the supplier required the dealer to purchase, including computer systems equipment the supplier required for communications purposes. The supplier shall repurchase such equipment at its fair market value.

(2) (a) The supplier shall repurchase specialized repair tools purchased by the dealer pursuant to the supplier's requirements. Such specialized repair tools must be unique to the supplier product line and in complete and usable condition.

(b) The supplier shall repurchase specialized repair tools at a price equal to seventy-five percent of the total invoice amount charged by the supplier to the dealer.

(3) The supplier shall pay the dealer one hundred percent of the net cost of all new, unsold, undamaged, and complete equipment that is resalable. The supplier may deduct a reasonable allowance for depreciation due to the dealer's usage and deterioration caused by weather conditions at the dealer's location. The supplier may also deduct all programs and discounts it previously allowed.

(4) (a) The supplier shall pay the dealer ninety-five percent of the current net price of all new, unused, and undamaged repair parts and accessories that are listed in the supplier's effective price list or catalog.

(b) A dealer may not return obsolete parts; except that a dealer may return a part for credit if it is found in the supplier's current returnable parts list or any superseded part that is not the subject to the suppliers parts return program as of the date of termination.

(5) (a) The supplier shall pay the dealer five percent of the current net price on all new, unused, and undamaged repair parts that the dealer returns to cover the cost of handling, packing, and loading.

(b) The supplier may perform the handling, packing, and loading itself instead of paying the five percent handling fee pursuant to paragraph (a) of this subsection (5). The dealer shall make available to the supplier all equipment previously purchased by the dealer. The dealer shall make such equipment available at the dealer's place of business or at those places where the equipment is located.

(6) This section does not require a supplier to repurchase any of the following:

(a) A repair part that has a limited storage life or that is subject to deterioration;

(b) A single repair part that is priced as a set of two or more items;

(c) A repair part that, because of its condition is not resalable as a new part without being repaired or reconditioned;

(d) Inventory for which the equipment dealer is unable to furnish evidence, to the supplier's satisfaction, of good title that is free and clear of all claims, liens, and encumbrances;

(e) Inventory that the dealer wants to keep, including lease or rental equipment if the dealer has a contractual right to do so;

(f) Equipment that is not in new, unused, undamaged, and complete condition;

(g) (I) Equipment that has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives an allowance for this usage or deterioration.

(II) For purposes of this paragraph (g), previously unsold demonstrated equipment that has less than fifty hours of use and that is equipped with an hour meter is new equipment.

(h) Repair parts that are not in new, unused, and undamaged condition;

(i) Inventory that the dealer ordered on or after the date the dealer received the notification of the supplier's termination of the dealer agreement; or

(j) Inventory that the dealer acquired from any source other than the supplier or the supplier's successor in interest.

(7) If a supplier fails or refuses to repurchase inventory as required by this section, the supplier shall be liable for:

(a) One hundred ten percent of the current net price of the inventory;

(b) Any freight charges paid by the dealer;

(c) Interest at the statutory rate from the date of shipment to the supplier; and

(d) Five percent of the inventory's current net price to cover handling, packing, and loading.

Source: L. 95: Entire article R&RE, p. 369, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-103 as it existed prior to 1995.

35-38-107. Repurchase - title - security interest. Upon paying the equipment dealer, the title and right to possession of the repurchased inventory shall transfer to the supplier and the equipment dealer shall have a continuing perfected security interest in the inventory. Upon such payment, the security interest of the supplier shall be perfected without the filing of a financing statement for a period of six years.

Source: L. 95: Entire article R&RE, p. 371, § 1, effective July 1.

35-38-108. Death or incapacitation of equipment dealer. (1) If an equipment dealer dies or becomes incapacitated, the supplier shall repurchase the inventory from the estate pursuant to the inventory repurchase provision of section 35-38-104 as if the supplier had terminated the dealer agreement. The guardian, the executor, or, if the dealer dies intestate, the heirs shall have six months from the date of the dealer's incapacity or death to submit inventory for repurchase.

(2) Nothing in this section shall be construed to require a supplier to repurchase inventory if the supplier and a dealer's family member have entered into a new dealer agreement.

(3) Nothing in this section shall be construed to entitle a guardian, heir, or personal representative of an incapacitated or deceased dealer to operate a dealership for more than six months after the dealer's incapacity or death without the consent of the supplier.

(4) This section shall be supplemental to an agreement between the dealer and the supplier that covers the return of equipment, attachments, and repair parts.

(5) Nothing in this section shall be construed to limit the right of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount pertaining to the equipment dealer's purchase of equipment.

(6) For the purposes of this section, "dealer" means an owner, an equal or majority partner, or the majority stockholder of a corporation who operates as an equipment dealer.

Source: L. 95: Entire article R&RE, p. 371, § 1, effective July 1.

Editor's note: This section is similar to former § 35-38-108 as it existed prior to 1995.

35-38-109. Cause of action - remedies. (1) An equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the provisions of this article. The dealer may also recover costs and reasonable attorney fees.

(2) An equipment dealer may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances.

(3) The remedies provided by this section are in addition to any other remedies permitted by law and shall not affect laws relating to product liability actions.

Source: L. 95: Entire article R&RE, p. 372, § 1, effective July 1.

ANNOTATION

Provisions of a dealer agreement that reflect the parties' intent that, in actions in connection with the agreement, the prevailing party is entitled to an award of attorney fees does not

extinguish, limit, or purport to waive a dealer's right to an award of attorney fees pursuant to subsection (1). *Denner Enters. v. Barrone, Inc.*, 87 P.3d 269 (Colo. App. 2004).

35-38-110. Current agreements - effect of law - void provisions. (1) Effective July 1, 1995, this article shall apply to dealer agreements at the time such agreements are extended, revised, modified, or changed in any manner and shall apply to all dealer agreements entered into or renewed on or after July 1, 1995.

(2) A provision in any contract or agreement with respect to a supplier that requires

jurisdiction or venue outside of this state or requires the application of the laws of another state or country is void with respect to a claim otherwise enforceable under this article.

Source: L. 95: Entire article R&RE, p. 372, § 1, effective July 1.

35-38-111. Warranties. (1) A supplier shall provide a fair and reasonable warranty agreement on any new equipment that it sells and shall fairly compensate each dealer for parts and labor used in fulfilling such warranty agreement.

(2) Any claim made by a dealer related to a warranty agreement shall be:

(a) Approved or disapproved within sixty days after receipt by the supplier; and

(b) Paid within thirty days after approval by the supplier.

(3) For disapproval of any warranty claim submitted by a dealer, such dealer shall be notified in writing of the specific reasons for the disapproval and of any action necessary for approval of the claim and shall be given a reasonable time period in which to complete such action.

(4) Warranty work performed by a dealer pursuant to this section shall be compensated at a reimbursement rate that is reasonable and customary to the industry.

(5) The supplier shall have the right to adjust for errors discovered during an audit and to adjust any claims collected in error.

Source: L. 95: Entire article R&RE, p. 372, § 1, effective July 1.

ARTICLE 39

Gasohol Production and Use

35-39-101 to 35-39-106. (Repealed)

Editor's note: (1) This article was added in 1978. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 35-39-106 provided for the repeal of this article, effective July 1, 1985. (See L. 78, p. 464.)

PROTECTION OF LIVESTOCK

ARTICLE 40

Predatory Animals - Control

Cross references: For control and eradication of predatory animals in counties, see § 35-7-202.

PART 1

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PART 1

GENERAL PROVISIONS

35-40-100.2. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Animal" means coyotes, foxes, bobcats, bears, mountain lions, wolves, beavers, muskrats, raccoons, opossums, and striped skunks and any animals identified by rule promulgated by the commissioner and approved by the parks and wildlife commission.

(1.5) "At risk" means any depredating animal species that has been designated by the parks and wildlife commission as endangered, threatened, or at risk after:

(a) A scientific investigation by the division of parks and wildlife in the department of natural resources that is based on valid, sound, and objective data and analysis that substantiates such designation; and

(b) Presentation of scientifically valid data, analysis, or commentary by the commissioner relating to depredating animals; and

(c) Presentation of scientifically valid data, analysis, or commentary by objective professionals, mutually identified by the state agricultural commission and the parks and wildlife commission relating to depredating animals.

(2) "Board" means the Colorado sheep and wool board.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Depredating animal" means any animal, animals, or group of animals that pose a threat to an agricultural product or resource.

(5) "Pose a threat" means the threat of causing economic loss by killing or damaging an agricultural product or resource or consuming stored agricultural products. A threat shall be presumed to be posed when damage has historically occurred, is occurring, or when it is necessary to prevent depredating animals from inflicting death or injury to livestock or damaging agricultural products or resources.

Source: **L. 89:** Entire section added, p. 1396, § 1, effective July 1. **L. 96:** Entire section amended, p. 294, § 2, effective April 12. **L. 2012:** (1), IP(1.5), and (1.5)(c) amended, (HB 12-1317), ch. 248, p. 1236, § 97, effective June 4.

35-40-101. Powers and duties of the commissioner - rules - agreements. (1) It is the duty of the commissioner to control depredating animals within the state of Colorado to reduce economic losses to agricultural products or resources, except as otherwise set forth in subsection (4) of this section. The commissioner has exclusive jurisdiction, as described in this article, over the control of depredating animals.

(2) The commissioner may take such steps as are necessary to carry out this part 1, including:

(a) Adopting rules for the control of depredating animals, in consultation with the parks and wildlife commission;

(b) Establishing lethal and nonlethal methods of controlling depredating animals;

(c) Allowing state employees and owners of agricultural products or resources and their families, employees, agents, and identified designees to control depredating animals. Any bears or mountain lions taken by identified designees shall remain the property of the state.

The license requirements of section 33-6-107 (9), C.R.S., shall not apply to this article; except that the identified designee shall possess a small game or furbearer license.

(d) Allowing nonlethal methods or preventive activities such as the use of guard dogs and scaring devices.

(3) When promulgating rules for the control of depredating animals, the commissioner shall consider and encourage humane and effective methods of control.

(4) With respect to controlling depredating animals of an at-risk species, the following applies:

(a) The parks and wildlife commission must approve any rules concerning the taking of depredating animals of an at-risk species prior to the adoption of such rules by the commissioner.

(b) The commissioner, when adopting or modifying rules, shall consider any reasonably workable alternative designed to minimize the direct effect on at-risk species.

(c) The commissioner shall control depredating animals of an at-risk species only where damage is occurring.

(d) The commissioner shall notify the division of parks and wildlife in the department of natural resources when controlling depredating animals of an at-risk species.

(5) The state agricultural commission shall approve any rules necessary to carry out the provisions of this part 1 prior to their adoption by the commissioner.

(6) The commissioner may enter into written agreements on behalf of the state with the United States to define such procedure in accordance with sections 35-40-101 to 35-40-106 as said commissioner shall deem advisable and proper for the purpose of cooperating with the United States in the control in this state of coyotes, wolves, mountain lions, bobcats, and other depredating animals. The commissioner may also enter into written agreements concerning the analysis of depredation.

(7) The commissioner is authorized to enter into agreements with the division of parks and wildlife in the department of natural resources for assistance in carrying out this part 1, which assistance may include resources, including financial assistance, at the discretion of the parks and wildlife commission.

(8) The commissioner shall contact and provide information to the parks and wildlife commission as said commission sets population levels and hunting permit numbers for predators in areas where there is depredation to agriculture.

(9) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(10) Nothing in this section shall be construed to preclude the division of parks and wildlife from issuing permits pursuant to section 33-3-106, C.R.S., for the taking of wildlife causing damage.

Source: L. 35: p. 926, § 1. CSA: C. 73, § 14. L. 41: p. 210, § 1. CRS 53: § 8-7-1. C.R.S. 1963: § 8-7-1. L. 73: p. 226, § 1. L. 89: Entire section amended, p. 1396, § 2, effective July 1. L. 96: Entire section amended, p. 295, § 3, effective April 12. L. 2012: IP(2), (2)(a), IP(4), (4)(a), (7), and (8) amended, (HB 12-1317), ch. 248, p. 1237, § 98, effective June 4.

35-40-102. Control of depredating animals. To further promote the control of depredating animals, the organized and systematic plan for such control may be extended by cooperative agreements between any person including, but not limited to, counties, associations, or corporations on the one part and the commissioner and the United States, or either of them, on the other part.

Source: L. 35: p. 927, § 2. CSA: C. 73, § 15. CRS 53: § 8-7-2. C.R.S. 1963: § 8-7-2. L. 73: p. 226, § 2. L. 89: Entire section amended, p. 1397, § 3, effective July 1. L. 96: Entire section amended, p. 297, § 4, effective April 12.

35-40-103. Disbursements from fund. (Repealed)

Source: L. 35: p. 927, § 3. CSA: C. 73, § 16. L. 37: p. 591, § 1. L. 39: p. 399, § 1. L. 41: p. 210, § 2. L. 43: p. 265, § 1. L. 45: p. 139, § 1. L. 47: p. 474, § 1. CRS 53: § 8-7-3. C.R.S. 1963: § 8-7-3. L. 73: p. 227, § 3. L. 2006: Entire section repealed, p. 148, § 27, effective August 7.

35-40-104. Predatory animal control license fee on sheep - predatory animal fund.

(1) and (2) (Deleted by amendment, L. 97, p. 180, § 7, effective March 31, 1997.)
(3) to (5) Repealed.

Source: L. 41: p. 211, § 3. CSA: C. 73, § 16(1). L. 43: p. 265, § 2. L. 45: p. 139, § 2. L. 47: p. 474, § 2. L. 49: p. 435, § 1. L. 52: p. 116, § 1. CRS 53: § 8-7-4. L. 57: p. 141, § 1. C.R.S. 1963: § 8-7-4. L. 67: p. 93, § 1. L. 83: Entire section R&RE, p. 2075, § 1, effective October 7. L. 89: (2) amended, (3) R&RE, and (4) repealed, pp. 1397, 1402, §§ 4, 5, 11, effective July 1. L. 97: (1) to (3) amended, p. 180, § 7, effective March 31. L. 2006: (3) repealed and (5) added, p. 148, §§ 28, 29, effective August 7. L. 2010: (5) repealed, (HB 10-1422), ch. 419, p. 2120, § 170, effective August 11.

35-40-105. Furs, specimens to be sold. (Repealed)

Source: L. 35: p. 928, § 4. CSA: C. 73, § 17. CRS 53: § 8-7-6. C.R.S. 1963: § 8-7-5. L. 2006: Entire section repealed, p. 148, § 30, effective August 7.

35-40-106. Hunters - how recommended. All government hunters employed under sections 35-40-101 to 35-40-106 shall be employed by recommendation of local county livestock growers' associations.

Source: L. 35: p. 928, § 5. CSA: C. 73, § 18. CRS 53: § 8-7-7. C.R.S. 1963: § 8-7-6.

35-40-107. Bounty on coyote, wolf. (Repealed)

Source: L. 1893: p. 68, § 1. R.S. 08: § 419. C.L. § 3243. CSA: C. 160, § 167. CRS 53: § 8-7-8. C.R.S. 1963: § 8-7-7. L. 2006: Entire section repealed, p. 148, § 31, effective August 7.

35-40-108. Scalps produced, claimant. (Repealed)

Source: L. 1893: p. 68, § 2. R.S. 08: § 420. C.L. § 3244. CSA: C. 160, § 168. CRS 53: § 8-7-9. C.R.S. 1963: § 8-7-8. L. 2006: Entire section repealed, p. 149, § 32, effective August 7.

35-40-109. Bounties paid by state. (Repealed)

Source: L. 1893: p. 69, § 3. R.S. 08: § 421. C.L. § 3245. CSA: C. 160, § 169. CRS 53: § 8-7-10. C.R.S. 1963: § 8-7-9. L. 2006: Entire section repealed, p. 149, § 33, effective August 7.

35-40-110. Record of scalps delivered - warrant for payment. (Repealed)

Source: L. 1893: p. 69, § 4. R.S. 08: § 422. C.L. § 3246. CSA: C. 160, § 170. CRS 53: § 8-7-11. C.R.S. 1963: § 8-7-10. L. 2006: Entire section repealed, p. 149, § 34, effective August 7.

35-40-111. Scalp taken out of state - penalty. (Repealed)

Source: L. 1893: p. 69, § 5. R.S. 08: § 423. C.L. § 3247. CSA: C. 160, § 171. CRS 53: § 8-7-12. C.R.S. 1963: § 8-7-11. L. 65: p. 232, § 2. L. 2006: Entire section repealed, p. 149, § 35, effective August 7.

35-40-112. County treasurer to administer oath. (Repealed)

Source: L. 1893: p. 69, § 6. R.S. 08: § 424. C.L. § 3248. CSA: C. 160, § 172. CRS 53: § 8-7-13. C.R.S. 1963: § 8-7-12. L. 2006: Entire section repealed, p. 149, § 36, effective August 7.

35-40-113. Permit system for poisoning of predators. The commissioner, after hearing and after consideration of both the needs and concerns involved, shall adopt a permit system incorporating the policies and procedures developed by the commissioner in cooperation with the division of parks and wildlife, pursuant to which annual permits shall be issued for the use of poisons by livestock operators, owners, or their authorized agents, for the control of predatory animals on lands owned or leased by them from private parties, if the point of use is at least two hundred yards from the nearest property line or public right-of-way. Such permit system shall, as practicably and reasonably as possible, provide a balance between the need to control predators and the need for protection for human beings and other forms of life. Such permit system shall specify the type of information to be set forth in the application, including the substance or device to be used, the quantity thereof, and identification of the property where the use is desired. The permit shall similarly set forth such information and shall also set forth such instructions, conditions, and restrictions as may be appropriate in the circumstances, including posting of public notice that poisons are in use.

Source: L. 71: p. 601, § 6. C.R.S. 1963: § 8-7-26. L. 89: Entire section amended, p. 1397, § 6, effective July 1.

ANNOTATION

Law reviews: For article, "Administrative Law", which discusses Tenth Circuit decisions dealing with administrative actions based upon

agency findings of scientific fact, see 64 Den. U. L. Rev. 111 (1987).

35-40-114. Acts constituting violation. (Repealed)

Source: L. 89: Entire section added, p. 1398, § 7, effective July 1. L. 97: Entire section repealed, p. 181, § 8, effective March 31.

35-40-115. Enforcement.

(1) to (3) Repealed.

(4) Whenever it appears to the commissioner, upon sufficient evidence satisfactory to the commissioner, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part 1 or of any rule or of any order promulgated under this part 1, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(5) (a) Any person who violates any provision of this part 1 or any regulation made pursuant to this part 1 is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the commissioner is found to have lacked substantial justification to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the state treasurer, who shall credit the same to the general fund.

(f) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: L. 89: Entire section added, p. 1398, § 7, effective July 1. L. 97: (1) to (3) repealed, p. 181, § 9, effective March 31. L. 2006: (5)(e) amended, p. 150, § 37, effective August 7.

PART 2

PROTECTION OF SHEEP AND CATTLE - CONTROL PROGRAMS

35-40-201. Definitions. As used in this part 2, unless the context otherwise requires:

- (1) "Cattle" includes cattle in the field or on the range, but not in feed lots.
- (2) "Owners of sheep and cattle" means the owners of sheep and cattle in the field or on the range, but shall not include the owners of sheep and cattle maintained in feed lots.
- (3) "Sheep" includes sheep in the field or on the range, but not in feed lots.

Source: L. 63: p. 191, § 1. C.R.S. 1963: § 8-7-25.

35-40-202. Sheep program. For the protection of sheep against predatory animals, the board of county commissioners of any county, upon the recommendation of an association of sheep growers in the county, has power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of sheep in such county.

Source: L. 61: p. 182, § 1. CRS 53: § 8-7-20. C.R.S. 1963: § 8-7-19.

35-40-203. Cattle program. For the protection of cattle against predatory animals, the board of county commissioners of any county, upon the recommendation of an association of cattle growers in the county, has power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of cattle in such county.

Source: L. 61: p. 182, § 2. CRS 53: § 8-7-21. C.R.S. 1963: § 8-7-20.

35-40-204. Establishment of program - continuance or discontinuance - license fees. (1) (a) The owners of at least fifty-one percent of the sheep, or the owners of at least fifty-one percent of the cattle, or the owners of at least fifty-one percent of both sheep and cattle acting jointly in the county, as shown by the assessment rolls of the last preceding assessment, may petition the board of county commissioners to establish a predatory animal control program as provided for in this part 2.

(b) The petition shall be filed on or before the first of November in any year at a regularly scheduled meeting of the board of county commissioners. After examination of the petition, if the board finds the petition in order and properly signed by the owners of at least fifty-one percent of the sheep or cattle, or both, in the county, the board shall establish the predatory animal control program provided for in this part 2 to commence the following calendar year on the first of February of said year; but the license fee as fixed under the provisions of section 35-40-205 shall be assessed only against the owners of sheep if only said owners of sheep petition for the establishment of said program, and only against the owners of cattle if only said owners of cattle so petition, and against both the owners of sheep and cattle if both said owners of sheep and cattle, acting jointly, so petition.

(c) Likewise, the question of an increase or decrease in the license fee, or the question of the discontinuance of the program, as provided in subsection (2) of this section, shall be determined only by the owners of sheep if they petitioned the establishment of the program, and only by the owners of cattle if they petitioned the establishment of the program, and jointly by the owners of both sheep and cattle if they, acting jointly, petitioned the establishment of the program.

(2) The license fee to defray the cost of any program established under the provisions of this part 2, as fixed by the board of county commissioners under the provisions of section 35-40-205, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition signed by the owners of at least fifty-one percent of the sheep, or the owners of at least fifty-one percent of the cattle, or the owners of at least fifty-one percent of both the sheep and cattle acting jointly, in the county, requesting repeal of said license fee in total and discontinuance of the program, or for an increase in said license fee, subject to the limits provided in section 35-40-205, or for a decrease in said license fee, in either of which events, the board of county commissioners shall fix a new license fee to continue from year to year and provide for the continuation of the program within the limits of the aggregate amount of the license fees as collected from year to year.

Source: L. 61: p. 182, § 3. CRS 53: § 8-7-22. C.R.S. 1963: § 8-7-21. L. 83: (1)(a) amended, p. 2076, § 2, effective October 7. L. 97: (1)(a) amended, p. 181, § 10, effective March 31.

35-40-205. License fee - expenditure of funds. (1) To defray the expense of the protection afforded by a program established under the provisions of this part 2, the board of county commissioners of any county has the power to require all owners or persons in possession of any cattle, one year old or over, to pay a license fee not exceeding thirty cents per head of cattle so owned or possessed by the owner or person in the county or brought in from another county or state and herded or grazed in the county. The assessor shall ascertain, in addition to the regular assessment for taxation purposes, all cattle which will be one year old or over as of February 1 within the county in any year in which the program is in effect, and shall keep such information in a separate record from the regular assessment, and shall include any cattle that shall be brought into the county between February 1 and January 31 of the following year to be herded or grazed for any part of the year. The board of county commissioners also has the power to require all sheep owners in the county who marketed sheep during the previous calendar year to pay a license fee not exceeding one dollar per head of sheep for which such payments were received. It is the responsibility of the Colorado sheep and wool board to provide the county assessor, by October 1 of each year, with a list containing the names and addresses of such sheep owners in the county and the number of sheep marketed during the immediately preceding twelve months. Such information shall be transmitted by the county assessor to the board of county commissioners by November 1 of each year. The board of county commissioners also has

the power to require all sheep owners who herded or grazed sheep in the county to pay a license fee not exceeding one dollar per head of sheep. The board of county commissioners shall then order the license fee to be levied against all such sheep or cattle, or both, and shall adjust the fee on cattle on the basis of the number of months any cattle will be herded or grazed in the county, and shall adjust the fee on sheep on the basis of the number of months the sheep were herded or grazed in the county during the previous year.

(2) Upon the order of the board of county commissioners, such license fee shall be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor, and shall be payable to and collected by the county treasurer as and when county personal property taxes are by law payable and collected, and when so levied shall be a lien upon the property of the licensee enforceable under the laws provided for the collection of taxes on personal property. When collected said fees shall be placed by the county treasurer in a predatory animal control fund of the county, and all moneys credited to said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only.

Source: L. 61: p. 183, § 4. CRS 53: § 8-7-23. C.R.S. 1963: § 8-7-22. L. 77: (1) amended, p. 1608, § 1, effective May 16. L. 83: (1) amended, p. 2077, § 3, effective October 7. L. 97: (1) amended, p. 181, § 11, effective March 31.

35-40-206. Other money credited to fund. All furs and skins of predatory animals taken as a result of the expenditure of the predatory animal control fund shall be sold, and the proceeds of such sale deposited in said predatory animal control fund for use in carrying out the purposes of this part 2.

Source: L. 61: p. 184, § 5. CRS 53: § 8-7-24. C.R.S. 1963: § 8-7-23. L. 97: Entire section amended, p. 182, § 12, effective March 31.

35-40-207. Program to be in addition to present program. The program established by this part 2 shall be in addition to the predatory animal control program established by part 1 of this article.

Source: L. 61: p. 184, § 6. CRS 53: § 8-7-25. C.R.S. 1963: § 8-7-24.

LIVESTOCK

ARTICLE 41

State Board of Stock Inspection Commissioners

35-41-100.3.	Definitions.	35-41-102.	Brand inspection fund - stray fund.
35-41-101.	State board of stock inspection commissioners - creation - brand commissioner - enterprise - bonds.	35-41-103.	Revolving fund.
		35-41-104.	Board's authority to impose fees and charges - rules.

35-41-100.3. Definitions. As used in this article, unless the context otherwise requires: (1) "Board" means the state board of stock inspection commissioners, created by this article.

(1.4) "Bovine livestock" means:

(a) All cattle and calves; and

(b) All sheep being treated as livestock at the request of the owner thereof.

(1.5) "Division" means the division of brand inspection in the department of agriculture, created in section 24-1-123 (4) (g) (I), C.R.S.

(1.7) "Equine livestock" means all horses, mules, and burros.

(2) "Feedlot" means a lot, pen enclosure, or building where cattle are fed for warm-up

or fattening purposes and which is secured by gates to prevent the livestock from movement to adjoining areas outside of feedlot.

(3) "Hide" means the skin from livestock.

(4) "Licensed slaughterhouse", "butcher", or "packing establishment" means a person, association, firm, or corporation carrying on the trade or business of slaughtering cattle, horses, mules, or burros for compensation or profit, under a license issued by the state.

(5) "Livestock" means all cattle, calves, horses, mules, and burros, or sheep may be treated as livestock for purposes of this article at the request of the owner thereof.

(6) "Public livestock market" means any place, establishment, or facility commonly known as a livestock market, conducted or operated for compensation or profit licensed in the state of Colorado, where brand inspection is normally maintained.

Source: L. 81: Entire section added, p. 1707, § 1, effective July 1. L. 98: (1.4) and (1.7) added, p. 262, § 1, effective August 5. L. 2004: (1.5) added, p. 642, § 1, effective July 1.

35-41-101. State board of stock inspection commissioners - creation - brand commissioner - enterprise - bonds.

(1) There is created a state board of stock inspection commissioners, composed of five commissioners who shall be appointed by the governor, all of whom shall be actively engaged in the production or feeding of cattle, horses, or sheep, with the consent of the senate. Two of the members shall represent the nonconfinement cattle industry; two of the members shall represent the confinement cattle industry; and one shall have broad general knowledge of the Colorado livestock industry and shall represent the commodity, other than the confinement and nonconfinement cattle industries, with the largest percentage of charged fees. The members of the board shall be appointed in such manner as will at all times represent as nearly as possible all sections of the state wherein livestock is a major activity, but at no time shall any two members be residents of the same particular section of the state. The term of office of said commissioners shall be for a period of four years. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Members may be removed for cause by the governor. They shall serve without compensation except for actual and necessary traveling expenses. The board shall meet monthly unless, in case of emergency, a special meeting is deemed advisable.

(2) The board shall appoint a brand commissioner who shall be under its supervision and who, in the absence of the board, shall carry out its policies. The brand commissioner shall be subject to the state personnel system laws. His compensation shall be paid out of the brand inspection fund. The brand commissioner, certified by the state personnel director to his position on April 27, 1963, shall continue in such certified status as provided by law.

(3) The board shall make such rules and regulations, not inconsistent with law, concerning the manner of inspection of brands and livestock as it deems proper.

(4) The state board of stock inspection commissioners and the office of brand commissioner created by this section shall comprise a part of the division of brand inspection in the department of agriculture.

(5) (a) The division and the board shall constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the board retains the authority to issue revenue bonds and the board and the division receive less than ten percent of their total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this section, the division and the board shall not be subject to any of the limitations imposed by section 20 of article X of the state constitution.

(b) The enterprise created pursuant to this section shall have all the powers and duties authorized by this title with regard to the board and the division.

(c) Nothing in this section shall be construed to limit or restrict the authority of the division to expend its revenues consistent with the provisions of this article and articles 41, 41.5, 43, 44, 46, 47, 53, 53.5, 55, 57, and 57.8 of this title.

(6) (a) The board may, by resolution that meets the requirements of subsection (7) of this section, authorize and issue revenue bonds in an amount not to exceed ten million

dollars in the aggregate for expenses of the division. The bonds may be issued only after approval by both chambers of the general assembly, acting either by bill or by joint resolution, and after approval by the governor in accordance with section 39 of article V of the state constitution. The bonds shall be payable only from moneys allocated to the division for expenses of the division pursuant to section 35-41-102.

(b) All bonds issued by the board shall specify that:

(I) No holder of any bonds may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bonds do not constitute a debt or financial obligation of the state and are payable only from the net revenues allocated to the division for expenses as designated in the bonds.

(7) (a) A resolution authorizing the issuance of bonds under the terms of this section shall state:

(I) The date of issuance of the bonds;

(II) A maturity date or dates during a period not to exceed thirty years after the date of issuance of the bonds;

(III) The interest rate or rates on, and the denomination or denominations of, the bonds; and

(IV) The medium of payment of the bonds and the place where the bonds will be paid.

(b) A resolution authorizing the issuance of bonds under the terms of this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds; and

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(8) Bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the board shall advertise the sale in any manner the board deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest to the date of delivery.

(9) Notwithstanding any provision of law to the contrary, all bonds issued pursuant to this section are negotiable.

(10) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds, including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) A resolution made pursuant to this section shall be deemed a contract with the holders of the bonds, and the duties of the board under the resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

(11) Bonds issued under this section and bearing the signatures of the board members in office on the date of the signing shall be deemed valid and binding obligations regardless of whether, prior to delivery and payment of the bonds, any or all of the persons whose signatures appear thereon have ceased to be members of the board.

(12) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net revenues pledged therefor. The board may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by the board over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

(1) amended, p. 1610, § 1, effective May 26. **L. 87:** (1) amended, p. 912, § 27, effective June 15. **L. 2004:** (1) amended and (5) to (12) added, p. 642, § 2, effective July 1.

ANNOTATION

Law reviews. For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951).

35-41-102. Brand inspection fund - estray fund. (1) All moneys coming into the hands of the board from the sale of estray animals shall constitute and be known as the estray fund, which fund is hereby created and continuously appropriated to the board, and shall be kept in an account separate and distinct from other accounts, in conformity with rules to be prescribed by said board. The estray fund is an escrow fund that the board shall keep in trust for the owner of the estray animal for six years after the date the proceeds from the sale of the animal were deposited in the fund. If the owner submits suitable proof of ownership to the board within the six-year period, the board shall pay to the owner the proceeds from the sale. If no such proof has been submitted within the six-year period, the board may expend the proceeds pursuant to this section. All other revenues coming into the hands of the board, including fees collected for the inspection of cattle, shall constitute and be known as the brand inspection fund, which shall be kept in conformity with the rules to be prescribed by the board. The board is authorized, in the administration of the brand inspection fund, to maintain an accounts receivable system for the collection of all moneys to be credited to the fund. The board is authorized to expend, of the revenues in the estray fund and the brand inspection fund:

(a) Repealed.

(b) Effective July 1, 2006, a maximum of three and six-tenths percent, or actual costs, whichever is less.

Source: **L. 03:** p. 443, § 26. **R.S. 08:** § 6417. **C.L.** § 3219. **CSA:** C. 160, § 136. **CRS 53:** § 8-1-2. **C.R.S. 1963:** § 8-1-2. **L. 77:** Entire section amended, p. 1611, § 1, effective March 26. **L. 88:** Entire section amended, p. 1224, § 1, effective July 1. **L. 2000:** Entire section amended, p. 1396, § 4, effective July 1. **L. 2003:** Entire section amended, p. 389, § 1, effective March 5. **L. 2004:** IP(1) amended, p. 645, § 4, effective July 1.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective July 1, 2006. (See L. 2003, p. 389.)

Cross references: For additional provisions concerning moneys paid into and expenditures of the estray fund, see §§ 35-41-103, 35-41.5-117, 35-42-109, 35-44-106, 35-44-113, 35-50-109, 35-53-109, 35-53-110, 35-53-119, 38-20-206, and 38-20-207; for additional provisions concerning moneys paid into and expenditures of the brand inspection fund, see §§ 35-41-101, 35-41.5-117, 35-43-114, 35-43-115, 35-43-115.5, 35-44-113, 35-53-110, 35-53.5-113, 35-55-115, 40-27-108, and 40-27-109.

35-41-103. Revolving fund. The state board of stock inspection commissioners may establish a revolving fund from the estray fund or other available funds of the board in the amount of one thousand dollars to refund to the state treasurer or other persons for short checks deposited, duplicate collection of fees, recording fees on cancellation of brands, or other necessary refunds, and the fund shall be reimbursed from the department's funds by voucher. A quarterly report shall be made as required by law to the controller showing all transactions involving the account.

Source: **L. 53:** 597, § 1. **CRS 53:** § 8-1-5. **C.R.S. 1963:** § 8-1-3.

35-41-104. Board's authority to impose fees and charges - rules. (1) **Bovine livestock.** (a) The board is hereby authorized to levy and collect, through authorized brand inspectors, a per-head inspection fee in an amount determined by the board by rule on all bovine livestock inspected; except that the charges for livestock shipped directly to

a licensed slaughter plant are as follows: For the first five hundred head per owner per certificate, two cents below the set inspection fee, and for over five hundred head per owner per certificate, five cents below the set inspection fee. Such sliding scale charges shall take effect at such time as the set inspection fee exceeds thirty-four cents. The inspection fee established pursuant to this paragraph (a) shall apply when any bovine livestock are being consigned to a Colorado-licensed public livestock market.

(b) In addition, the board is authorized to levy and collect, through authorized brand inspectors, a minimum fee in an amount determined by the board by rule from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law; except that, when cattle that are owned by more than one person are inspected at one site, only one such minimum fee shall be collected. The minimum fee shall be due and payable to the inspector when the inspector arrives at the designated inspection point, whether or not an inspection of the livestock actually takes place.

(1.5) Equine livestock. (a) The board is hereby authorized to levy and collect, through authorized brand inspectors, a per-head inspection fee in an amount determined by the board by rule on all equine livestock inspected. The inspection fee established pursuant to this paragraph (a) shall apply when any equine livestock are being consigned to a Colorado-licensed public livestock market.

(b) In addition, the board is authorized to levy and collect, through authorized brand inspectors, a minimum fee in an amount determined by the board by rule from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law. The minimum fee shall be due and payable to the inspector when the inspector arrives at the designated inspection point, whether or not an inspection of the livestock actually takes place.

(2) It is the duty of all authorized Colorado brand inspectors to inspect all livestock, except such as are exempt by law, that are offered for sale or to be moved interstate or intrastate and to collect the fees established pursuant to subsections (1) and (1.5) of this section. The board shall determine the amount of the fees that shall be collected by authorized brand inspectors from the owner or person in charge of said livestock before issuing a certificate of brand inspection granting leave to the owner or person in charge to offer the brand inspected livestock for sale or movement interstate or intrastate. The fees so collected shall be reported and transmitted to the board at such time and in such manner as the board shall by rule require.

(3) Inspection fees as authorized in subsections (1) and (1.5) of this section shall be collected by brand inspectors from the owners or persons in charge of said livestock before issuing any certificate when:

- (a) Brand inspection is required by law;
- (b) Livestock are being consigned for sale at a Colorado licensed public livestock market in accordance with section 35-55-112;
- (c) Livestock are consigned for slaughter to a custom meat processor licensed by the Colorado department of agriculture or a packing plant licensed by the United States department of agriculture;
- (d) Livestock are offered for sale in accordance with section 35-53-105;
- (e) Livestock are moved within Colorado or to another state, except as exempted by law;
- (f) Livestock are being moved from pasture before being placed in a feedlot, in accordance with section 35-53-125.

(4) Minimum fee when inspection required by law - bovine livestock. A minimum fee in an amount determined by the board by rule shall be collected from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law; except that, when bovine livestock owned by more than one person are inspected at one site, only one minimum fee shall be collected. No minimum fee shall be required when bovine livestock are consigned for sale at a Colorado-licensed public livestock market.

(4.5) Minimum fee when inspection required by law - equine livestock. A minimum fee in an amount determined by the board by rule shall be collected from each person, company, or corporation requesting the brand inspection or from whom a brand inspection

is required by law. No minimum fee shall be required when equine livestock are consigned for sale at a Colorado-licensed public livestock market.

(5) In addition to the brand inspection fee, a Colorado beef board fee up to and not in excess of one dollar per head or the amount assessed pursuant to the beef promotion and research order, 7 CFR 1260.172, as amended, whichever is greater, shall be collected on cattle and calves as a part of the brand inspection made on such animals under the same authority, at the same time and place, in the same manner, and upon the same animals which are subject to brand inspection and a brand inspection fee, except:

(a) When cattle and calves are being moved in excess of seventy-five land miles within the state for grazing purposes if no change in ownership is involved; or

(b) When any unbranded or freshly branded calves are inspected with their mothers as provided in section 35-43-129 and no change in ownership is involved; or

(c) When cattle are placed in a feedlot with no change in ownership, or when rodeo competition cattle are inspected at the headquarters ranch before the beginning of rodeo season and the cattle will not leave the state.

(6) In the case of unbranded or freshly branded calves inspected with their mothers in compliance with section 35-43-129, in addition to the inspection fee for each calf inspected, mileage expense allowed by section 35-43-129 shall also be collected.

(7) An inspection fee in an amount determined by the board by rule shall be collected for each hide inspected as provided in section 35-53-115.

(8) The board shall determine, and publish in its rules, which inspection fees can be carried on an accounts receivable basis. No such account shall be carried for a period that exceeds one month.

(9) The board shall have the authority to impose a mileage charge when brand inspection is required for investigations of estrays, investigations of theft, and other duties deemed necessary by statute or the board. The charge per mile shall be the amount allowed state officers and employees pursuant to section 24-9-104, C.R.S.

(10) In addition to the brand inspection fee authorized by this section, the assessment determined by the board of directors of the Colorado horse development authority pursuant to section 35-57.8-109 shall be collected on horses as a part of the brand inspection made on horses under the same authority, at the same time and place, in the same manner, and on the same horses that are subject to brand inspection and brand inspection fees.

(11) Any rule adopted by the board to determine the amount of a fee authorized by this title shall be subject to article 4 of title 24, C.R.S.; except that:

(a) The board shall provide the livestock industry with thirty days' notice of any fee change proposal and of the date and location of an informational meeting at which the changes shall be discussed;

(b) At or after the next regularly scheduled board meeting after such informational meeting, the board may set the fees; and

(c) The fee change shall take effect at least ninety days after the board sets the fees.

Source: **L. 81:** Entire section added, p. 1707, § 1, effective July 1. **L. 85:** IP(5) and (5)(c) amended, p. 1141, § 1, effective July 1. **L. 89:** (1), (4), and (7) amended and (9) added, p. 1403, § 1, effective May 2. **L. 93:** IP(5) amended, p. 1855, § 2, effective July 1. **L. 98:** (10) added, p. 1258, § 1, effective June 1; (1), (2), IP(3), (4), and (6) amended and (1.5) and (4.5) added, p. 262, § 2, effective August 5. **L. 2004:** (1), (1.5), (2), (4), (4.5), (7), and (8) amended and (11) added, p. 646, § 5, effective July 1. **L. 2009:** (3)(c) amended, (SB 09-151), ch. 89, p. 347, § 6, effective July 1.

ARTICLE 41.5

Alternative Livestock Act

35-41.5-101.	Short title.		license required.
35-41.5-102.	Definitions.	35-41.5-105.	Powers and duties of the board.
35-41.5-103.	Scope of article.		
35-41.5-104.	Alternative livestock farm	35-41.5-106.	Alternative livestock farm -

	license requirements - application - fees.	35-41.5-112.	Enforcement.
35-41.5-107.	Alternative livestock farm license - renewals.	35-41.5-113.	Disciplinary actions - denial of license.
35-41.5-108.	Record-keeping requirements.	35-41.5-114.	Civil penalties.
35-41.5-109.	Unlawful acts.	35-41.5-115.	Criminal penalties.
35-41.5-110.	Inspections - investigations - access - subpoena.	35-41.5-116.	Alternative livestock farm cash fund - creation - fees.
35-41.5-111.	Escaped alternative livestock.	35-41.5-117.	Disposition of alternative livestock taken by officer.

35-41.5-101. Short title. This article shall be known and may be cited as the “Alternative Livestock Act”.

Source: L. 94: Entire article added, p. 1698, § 6, effective July 1.

35-41.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Alternative livestock” means any domesticated elk or fallow deer as such are classified as alternative livestock pursuant to this article. Alternative livestock shall not be considered wildlife for purposes of this article.

(2) “Board” means the state board of stock inspection commissioners created in section 35-41-101.

(3) “Commission” means the state agricultural commission created in section 35-1-105.

(4) “Commissioner” means the commissioner of agriculture or the commissioner’s designee.

(5) “Department” means the department of agriculture.

(6) “Escaped alternative livestock” means an animal not within the control or under the direction of a licensee or a licensee’s designee.

(7) “License” means an alternative livestock farm license.

(8) “Licensee” means a person, company, corporation, limited liability company, or partnership.

Source: L. 94: Entire article added, p. 1698, § 6, effective July 1.

35-41.5-103. Scope of article. (1) The following are subject to the provisions of this article and to any rules adopted pursuant thereto:

(a) Any animal classified as an alternative livestock pursuant to this article; and

(b) Any person selling, trading, giving, bartering, or otherwise transferring any alternative livestock in this state, unless specifically exempted elsewhere in this article.

(2) The provisions of this article do not apply to:

(a) Wildlife regulated by the division of parks and wildlife;

(b) Livestock as defined in section 35-41-100.3 (5); or

(c) Alternative livestock owned by or in the possession of a zoological park that is accredited by the American zoo and aquarium association; except that:

(I) The rules of the board adopted pursuant to this article regarding the transfer of alternative livestock shall apply to any transfer and movement of alternative livestock; and

(II) Any intrastate transfer and movement of alternative livestock by a zoological park accredited by the American zoo and aquarium association to any person or entity not accredited by the American zoo and aquarium association is subject to this article and to any rules adopted pursuant to this article.

Source: L. 94: Entire article added, p. 1698, § 6, effective July 1. **L. 95:** (2) amended, p. 18, § 3, effective March 9.

35-41.5-104. Alternative livestock farm license required. Any person operating a farm or ranch at which alternative livestock are raised shall obtain a valid alternative

livestock farm license issued by the board pursuant to this article and any rules promulgated pursuant thereto. Such license shall be issued for a specific class or subclass of alternative livestock.

Source: L. 94: Entire article added, p. 1698, § 6, effective July 1.

35-41.5-105. Powers and duties of the board. (1) The board is hereby authorized to administer and enforce the provisions of this article and any rules adopted pursuant thereto.

(2) The board shall adopt any necessary and reasonable rules for the administration and enforcement of this article, including rules governing:

- (a) Operating standards for an alternative livestock farm;
- (b) Inspections of alternative livestock for purposes of licensing or renewing a license, changes of ownership of alternative livestock, and movement of alternative livestock, including requiring proof that alternative livestock meet the requirements of a tuberculosis surveillance plan adopted pursuant to section 35-1-106 (1) (o) and that such alternative livestock meet requirements concerning the control of infectious diseases as required by the commission, and requirements concerning genetic purity as required by the parks and wildlife commission;

(c) Establishing the form and manner of submission of records required for licensure and record keeping pursuant to this article;

(d) Establishing standards of practice for a licensee;

(e) Setting classifications and subclassifications of alternative livestock;

(f) Defining grounds for disciplinary action authorized under this article, including letters of admonition or the denial, suspension, revocation, or restriction of any license;

(g) Setting fees for licenses based upon the classification of an alternative livestock farm; and

(h) The disposition of any estray taken up by inspectors as determined to be proper and just and in the best interest of the owner of the estray.

(3) The board shall set licensing and inspection fees for each classification of alternative livestock based on the actual cost of administering and enforcing this article and any rules adopted pursuant thereto.

(4) The board is authorized to charge a service fee to cover the cost of administrative requirements in addition to any inspection fee.

(5) The board is authorized to conduct hearings required under sections 35-41.5-112, 35-41.5-113, and 35-41.5-114 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when the use of administrative law judges would result in a net saving of costs to the board.

(6) The board is authorized to enter into cooperative agreements with and to accept grants from any agency or political subdivision of this state or any other state, or with any agency of the United States government, subject to limitations set forth elsewhere in the Colorado Revised Statutes and the state constitution, to carry out the provisions of this article.

(7) The powers and duties vested in the board by this article may be delegated to qualified employees of the department and the division of parks and wildlife.

(8) The parks and wildlife commission may review rules concerning alternative livestock proposed by the board and may make recommendations to the board concerning such rules.

(9) The board may assign a brand to an alternative livestock farm license. Such brand shall be used as directed by the board pursuant to rule.

(10) If two or more persons claim ownership of any certain alternative livestock and the true owner is not readily ascertainable, the board may:

(a) Treat the alternative livestock as an estray pursuant to article 44 of this title; or

(b) Provide for arbitration of the claim of ownership under the supervision of the board or the designee of the board.

Source: L. 94: Entire article added, p. 1699, § 6, effective July 1. **L. 2012:** IP(2), (2)(b), and (8) amended, (HB 12-1317), ch. 248, p. 1237, § 99, effective June 4.

35-41.5-106. Alternative livestock farm - license requirements - application - fees.

(1) Each applicant for an alternative livestock farm license shall submit an application providing all information in the form and manner as required by the board.

(2) No license shall be issued:

(a) Unless accompanied by documentation that the alternative livestock on the farm are in compliance with the rules promulgated by the commission pursuant to section 35-1-106

(1) (o);

(b) Unless accompanied by documentation that the alternative livestock on the livestock farm have been inspected by the board;

(c) Until the board has inspected and approved the farm; and

(d) Unless accompanied by a site review and recommendation issued by the division of parks and wildlife if such site review and recommendation is completed within thirty days after the request is received from the board. If the site review and recommendation is not issued within thirty days after the request is received, the requirement for such site review and recommendation shall be deemed waived.

(3) Each separate location of a farm shall be licensed separately.

(4) (a) If an alternative livestock farm operates under more than one business name from a single location, the name of each such operation shall be listed with the board in the form and manner required by the board. The board may require that a separate fee be paid for each business name so listed.

(b) No additional alternative livestock farm license shall be required for an additional business name.

(c) If an alternative livestock farm operates under more than one business name from a single location, the farm shall maintain separate records pursuant to section 35-41.5-108 for each such business name.

(5) Each applicant for an alternative livestock farm license shall pay a license fee in an amount determined by the board.

(6) Each alternative livestock farm license shall expire on August 31 in the year following the year of issuance.

(7) Each licensee shall report to the board, in the form and manner required by the board, any change in the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

(8) Licenses issued pursuant to this article are not transferable.

(9) Each alternative livestock farm licensee shall:

(a) Separate alternative livestock from captive wildlife as required by the board;

(b) Have the alternative livestock inspected by the board prior to any movement, sale, or slaughter;

(c) Identify in the form and manner designated by the board each alternative livestock animal in its possession;

(d) Maintain records of the alternative livestock inventory in accordance with section 35-41.5-108.

Source: L. 94: Entire article added, p. 1700, § 6, effective July 1.

35-41.5-107. Alternative livestock farm license - renewals. (1) An alternative livestock farm licensed pursuant to this article shall make an application to renew its license on or before June 30. Said application shall be in the form and manner prescribed by the board and shall be accompanied by the renewal fee.

(2) No license shall be renewed unless accompanied by an inspection certificate showing that the alternative livestock on the alternative livestock farm have been inspected and certified by the board for health and genetic purity during the immediately preceding ninety-day period.

(3) If the application for renewal is not postmarked on or before June 30, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(4) If the application and fee for renewal are not postmarked on or before August 31, the license shall not be renewed, and a new license shall be required.

Source: L. 94: Entire article added, p. 1701, § 6, effective July 1.

35-41.5-108. Record-keeping requirements. (1) Each alternative livestock farm licensee shall keep and maintain records in the form and manner designated by the board.

(2) Records maintained pursuant to subsection (1) of this section shall be retained at the licensee's address of record:

(a) For a period of three years after the death or sale of an animal if such record pertains to an alternative livestock; or

(b) For a period of three years if such record does not pertain to an alternative livestock.

Source: L. 94: Entire article added, p. 1702, § 6, effective July 1.

35-41.5-109. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person to:

(a) Perform any of the acts for which licensure as an alternative livestock farm is required without possessing a valid license;

(b) Hold oneself out as being so qualified to perform any of the acts for which licensure pursuant to this article is required without possessing a valid license;

(c) Solicit, advertise, or offer to perform any of the acts for which licensure as an alternative livestock farm is required without possessing a valid license to perform such acts;

(d) Refuse or fail to comply with the provisions of this article;

(e) Refuse or fail to comply with any rules adopted by the board pursuant to this article or to any lawful order issued by the board;

(f) Refuse to comply with a cease-and-desist order issued pursuant to section 35-41.5-112;

(g) Willfully make a material misstatement in the application for a license or in the application for renewal thereof or to the department during an official investigation;

(h) Impersonate any federal, state, county, city and county, or municipal official or inspector;

(i) Aid or abet another in any violation of this article or of any rule promulgated pursuant thereto;

(j) Hunt alternative livestock without first obtaining a hunter education certificate pursuant to section 33-6-107 (8), C.R.S.; or

(k) Ship any alternative livestock other than those described in the certificate provided by the brand inspector inspecting such alternative livestock or to remove any alternative livestock and to substitute another without the knowledge of the brand inspector.

(2) It is unlawful and a violation of this article for any alternative livestock farm to:

(a) Import or possess for the purpose of selling, trading, giving, or otherwise transferring any alternative livestock without having said alternative livestock inspected in accordance with this article; except that this paragraph (a) shall not apply to alternative livestock sold, traded, given, or transferred by an operating zoological park as defined by the parks and wildlife commission or research institution using such animals for scientific research, if the park or institution otherwise complies with this article and all rules promulgated pursuant thereto;

(b) Sell any alternative livestock in, by, to, or from any unlicensed alternative livestock farm;

(c) Sell any alternative livestock in, by, to, or from any alternative livestock farm unless such alternative livestock has been inspected in accordance with this article;

(d) Refuse to permit entry or inspection in accordance with section 35-41.5-110;

(e) Sell, offer for sale, barter, exchange, or otherwise transfer red deer or red deer hybrids within the state of Colorado;

(f) Allow a license issued pursuant to this article to be used by an unlicensed person; or

(g) Make any misrepresentation or false promise, through advertisements, employees, agents, or otherwise, in connection with the business operations licensed pursuant to this article or for which an application for a license is pending.

Source: L. 94: Entire article added, p. 1702, § 6, effective July 1. **L. 2012:** (2)(a) amended, (HB 12-1317), ch. 248, p. 1238, § 100, effective June 4.

35-41.5-110. Inspections - investigations - access - subpoena. (1) The board, upon its own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this article.

(2) (a) Appropriate division of parks and wildlife personnel may accompany the board on any inspection and may request an inspection of any licensed alternative livestock farm.

(b) The board shall perform any such requested inspection within seventy-two hours after receipt of such request, excluding weekends and legal holidays.

(c) If the board is unable to perform any such requested inspection within seventy-two hours after receipt of such request, excluding weekends and legal holidays, the division of parks and wildlife shall be authorized to perform such requested inspection.

(d) The actual cost for, plus mileage for, any inspection requested by the division of parks and wildlife shall be paid for by the division of parks and wildlife.

(3) Complaints of record made to the board and the results of the board's investigations may, in the discretion of the board, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on the person in interest.

(4) For purposes of carrying out the provisions of this article and rules promulgated pursuant thereto, at any reasonable time during regular business hours, the board shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant to:

(a) All buildings, yards, pens, pastures, and other areas in which any alternative livestock is kept, handled, or transported; and

(b) All records required to be kept and to make copies of such records.

(5) (a) The board shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(b) Upon failure or refusal of any witness to obey any subpoena, the board may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(6) As part of any inspection for the licensing or renewal of an alternative livestock farm, any change of ownership of any alternative livestock, and any movement of alternative livestock, the board shall require:

(a) Proof that the alternative livestock farm has maintained the purity of the alternative livestock herds by preventing the introduction of red deer or hybrid nonnative species either by the importation of untested live animals, gametes, eggs, sperm, or other genetic material into alternative livestock herds in Colorado;

(b) Proof that each alternative livestock animal originates from a legal source; and

(c) Records to be kept and animals to be marked so as to identify individual animals.

Source: L. 94: Entire article added, p. 1704, § 6, effective July 1.

35-41.5-111. Escaped alternative livestock. (1) Any alternative livestock not recovered by its licensed owner within seventy-two hours after escape shall be reported to the division of parks and wildlife in such manner as required by the division of parks and wildlife.

(2) Any escaped alternative livestock killed by a licensed hunter in a manner which otherwise complies with title 33, C.R.S., and any rules promulgated pursuant thereto, shall be deemed a legal killing and neither the licensed hunter, the department, nor the division of parks and wildlife shall be liable to the owner for such killing.

Source: L. 94: Entire article added, p. 1705, § 6, effective July 1.

35-41.5-112. Enforcement. (1) The board or its designee shall enforce the provisions of this article.

(2) (a) If the board has reasonable cause to believe a violation of any provision of this article or any rule adopted pursuant to this article has occurred and immediate enforcement is deemed necessary, it may issue a cease-and-desist order, which shall require a person to cease violating any provision of this article or any rule promulgated pursuant to this article.

(b) A cease-and-desist order shall set forth the provisions alleged to have been violated, the facts constituting the violation, and the requirement that all violating actions immediately cease.

(c) (I) At any time after service of the order to cease and desist, the person for whom such order was served may request, at such person's discretion, a prompt hearing to determine whether or not such violation has occurred.

(II) A hearing held pursuant to this paragraph (c) shall be conducted in conformance with the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) If the board possesses sufficient evidence to indicate that a person has engaged in any act or practice constituting a violation of this article or of any rule adopted under this article, the board may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the board shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. The court shall not require the board to post a bond.

Source: L. 94: Entire article added, p. 1705, § 6, effective July 1.

35-41.5-113. Disciplinary actions - denial of license. (1) The board, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or may deny, suspend, refuse to renew, restrict, or revoke any license authorized under this article if the applicant or licensee has:

(a) Refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the board;

(b) Had an equivalent license denied, revoked, or suspended by any authority;

(c) Refused to provide the board with reasonable, complete, and accurate information regarding any alternative livestock when requested by the board;

(d) Falsified any information requested by the board;

(e) Been convicted of stealing live big game wildlife; or

(f) Had a license issued pursuant to 33-1-106, C.R.S., revoked.

(2) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

Source: L. 94: Entire article added, p. 1706, § 6, effective July 1.

35-41.5-114. Civil penalties. (1) Any person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the board. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the board is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the board, the board may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the board may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 94: Entire article added, p. 1706, § 6, effective July 1.

35-41.5-115. Criminal penalties. Any person who violates any of the provisions of section 35-41.5-109 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501 (1), C.R.S.

Source: L. 94: Entire article added, p. 1707, § 6, effective July 1. **L. 2002:** Entire section amended, p. 1549, § 318, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-41.5-116. Alternative livestock farm cash fund - creation - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the alternative livestock farm cash fund, which fund is hereby created. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of this fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. The general assembly shall make annual appropriations from such fund to the department to carry out the purposes of this article. The board is authorized to expend a maximum of three and six-tenths percent, or actual costs, whichever is less, of the base appropriation allocated to the brand inspection division to offset the indirect costs of the board.

Source: L. 94: Entire article added, p. 1707, § 6, effective July 1.

35-41.5-117. Disposition of alternative livestock taken by officer. (1) (a) An inspector shall declare an alternative livestock is an estray, as defined in section 35-44-101, if during an inspection of the alternative livestock prior to shipment or removal from the state the inspector finds an alternative livestock bearing marks, identification tags, or brands different from those of the owner of the other alternative livestock in the shipment and the owner or shipper fails to exhibit a bill of sale or other authority for the possession of the alternative livestock.

(b) Upon declaring an alternative livestock an estray, a brand inspector shall take possession of the alternative livestock on behalf of the board and shall dispose of such alternative livestock in accordance with article 44 of this title and any rules promulgated thereto.

(2) Any person satisfying the board that such person is the owner of an estray alternative livestock that has been disposed of pursuant to paragraph (b) of subsection (1) of this section shall be forthwith paid the amount for which the alternative livestock was sold less any reasonable and necessary expenses.

(3) (a) All moneys in the estray fund created in section 35-41-102 derived from the disposal of estray alternative livestock by the board pursuant to paragraph (b) of subsection (1) of this section, that have been in the estray fund for six years or longer and for which no valid claim has been made, shall be credited to the brand inspection fund created in section 35-41-102.

(b) Any claim for moneys in the estray fund made by the owner of an alternative livestock sold as an estray pursuant to paragraph (b) of subsection (1) of this section shall

be made within three years from the date of the sale of such estray alternative livestock or such claim shall be forever barred.

(4) A brand inspector shall refuse to issue a certificate authorizing the transport of alternative livestock or the carcasses thereof and shall seize the same if:

(a) The person in control of the alternative livestock or the carcasses thereof is not in possession of a duly executed bill of sale;

(b) The person in control of the alternative livestock or the carcasses thereof cannot furnish other satisfactory proof that such person is the lawful owner of the alternative livestock or the carcasses thereof; or

(c) The inspector has good reason to believe that the alternative livestock or the carcasses thereof are stolen.

(5) (a) A brand inspector or peace officer, as described in section 16-2.5-101, C.R.S., is authorized to stop and inspect any vehicle transporting or containing alternative livestock or the carcasses thereof.

(b) A brand inspector or peace officer may demand to see a bill of sale, permit, or certificate for the alternative livestock or the carcasses thereof from the person operating the vehicle.

(c) If the operator of the vehicle is unable to produce a bill of sale, permit, or certificate, the inspector or peace officer is authorized to:

(I) Arrest, with or without warrant, the vehicle operator;

(II) Seize the vehicle and the alternative livestock or carcasses thereof; and

(III) Retain possession of the vehicle and the alternative livestock or the carcasses thereof until:

(A) The vehicle operator can produce evidence satisfactory to the board that the vehicle operator or the person for whom the alternative livestock is being transported is the lawful owner thereof; or

(B) The alternative livestock, or the carcasses thereof, are disposed of pursuant to paragraph (b) of subsection (1) or subsection (6) of this section.

(d) After a vehicle seized pursuant to paragraph (c) of this subsection (5) has been unloaded by the brand inspector or peace officer at the site where the seized livestock or carcasses are being held, such vehicle shall be made available for return to the owner of such vehicle.

(6) If a brand inspector or peace officer deems it necessary to sell carcasses taken pursuant to subsection (5) of this section to prevent loss by spoiling, the brand inspector or peace officer is authorized to do so. The proceeds from the sale of the carcasses shall be credited to the estray fund created in section 35-41-102.

(7) (a) If within ten days after alternative livestock or the carcasses thereof have been seized:

(I) The ownership of such alternative livestock or carcasses is shown and established, the alternative livestock, the carcasses thereof, or the proceeds from the sale of the alternative livestock or the carcasses thereof shall be delivered to the owner; or

(II) The ownership of such alternative livestock or the carcasses thereof is not shown and established, the alternative livestock or the carcasses thereof shall be disposed of pursuant to paragraph (b) of subsection (1) of this section.

(b) Any moneys derived from the sale of alternative livestock or the carcasses thereof shall be credited to the estray fund created in section 35-41-102.

(c) The facts concerning the detention and sale of any alternative livestock or the carcasses thereof shall be reported to the district attorney of the judicial district in which such alternative livestock or carcasses were detained and sold.

(8) Unless alternative livestock required to be inspected pursuant to this article are released by a brand inspector, such alternative livestock shall be inspected by a duly authorized brand inspector on arrival at any market, regardless of whether the alternative livestock has been previously inspected at the point of origin, before such alternative livestock are weighed.

Source: L. 94: Entire article added, p. 1707, § 6, effective July 1. L. 2003: (5)(a) amended, p. 1620, § 31, effective August 6.

ARTICLE 42

Animal Protection

Editor’s note: This article was numbered as article 1 of chapter 19, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

35-42-101.	Short title.		treated, neglected, or abandoned.
35-42-102.	Legislative declaration.		
35-42-103.	Definitions.	35-42-110.	Injured animals may be euthanized.
35-42-104.	Scope of article.		
35-42-105.	Bureau of animal protection - creation.	35-42-111.	Investigations - access - administrative subpoena.
35-42-106.	Powers and duties of the commissioner.	35-42-112.	Enforcement.
35-42-107.	Bureau personnel - appointment.	35-42-113.	Animal protection fund - creation.
35-42-108.	Care of confined animal.	35-42-114.	Local regulation.
35-42-109.	Protection of animals mis-	35-42-115.	Dangerous dog registry - created - cash fund.

35-42-101. Short title. This article shall be known and may be cited as the “Animal Protection Act”.

Source: L. 90: Entire article R&RE, p. 1605, § 1, effective July 1.

35-42-102. Legislative declaration. The general assembly hereby finds and declares that the protection of companion animals and livestock is a matter of statewide concern; and that it is the policy of this state that persons responsible for the care or custody of such animals be persons fit to adequately provide for the health and well-being of such animals.

Source: L. 90: Entire article R&RE, p. 1605, § 1, effective July 1.

- 35-42-103. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Abandon” means the leaving of an animal without adequate provisions for the animal’s proper care by its owner, the person responsible for the animal’s care or custody, or any other person having possession of such animal.
 - (2) “Accepted animal husbandry” means practices generally recognized as appropriate in the care of animals consistent with the species, breed, and type of animal.
 - (3) “Animal” means any living dumb creature.
 - (4) “Commissioner” means the Colorado commissioner of agriculture or his designee.
 - (5) “Companion animal” means domestic dogs, domestic cats, small pet birds, and other nonlivestock species.
 - (6) “Department” means the Colorado department of agriculture.
 - (7) “Division” means the division of animal industry of the department of agriculture.
 - (8) “Livestock” means cattle, swine, sheep, goats, and such horses, mules, asses, and other animals used in the farm or ranch production of food, fiber, or other products defined by the commissioner as agricultural products.
 - (9) “Mistreat” means every act or omission which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.

(10) "Neglect" means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal's health and well-being consistent with the species, breed, and type of animal.

Source: L. 90: Entire article keR&RE, p. 1605, § 1, effective July 1.

35-42-104. Scope of article. (1) Nothing in this article shall affect accepted animal husbandry practices utilized by any person in the care of companion or livestock animals, or in the extermination of undesirable pests as defined in articles 7, 10, and 43 of this title.

(2) In case of any conflict between this article or regulations adopted pursuant to this article or section 35-43-126 and the wildlife statutes of the state, said wildlife statutes shall control.

(3) Nothing in this article shall affect animal care otherwise authorized by law.

(4) Nothing in this article shall affect facilities licensed under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

Source: L. 90: Entire article R&RE, p. 1606, § 1, effective July 1.

35-42-105. Bureau of animal protection - creation. There is hereby created the state bureau of animal protection, referred to in this article as the "bureau".

Source: L. 90: Entire article R&RE, p. 1606, § 1, effective July 1.

Editor's note: This section is similar to former § 35-42-101 as it existed prior to 1990.

Cross references: For creation of the department of agriculture and transfer of the state bureau of animal protection to the department under the "Administrative Organization Act of 1968", see § 24-1-123.

35-42-106. Powers and duties of the commissioner. The commissioner has the power to administer and enforce the provisions of this article, appoint agents and establish the qualifications of such agents, promulgate rules and regulations, enter into contracts, and implement training, procedures, and rules and regulations of recommended standards for animal control officers.

Source: L. 90: Entire article R&RE, p. 1606, § 1, effective July 1.

Editor's note: This section is similar to former § 35-42-102 as it existed prior to 1990.

35-42-107. Bureau personnel - appointment. (1) Subject to the provisions of section 13 of article XII of the state constitution, the commissioner shall appoint such animal protection agents as are necessary to carry out the provisions of this article.

(2) The commissioner may appoint agents who are employees of the state, nonprofit corporations, municipal corporations, counties, cities, cities and counties, or any other local governmental entity or political subdivision of the state.

(3) When agents who are employees of nonprofit corporations are appointed, the corporation shall furnish evidence of minimum liability insurance covering said agent in the amount of one hundred thousand dollars. The state shall not be liable for the actions of such agents. Agents of the bureau shall submit to training as specified by the commissioner.

(4) Agents of the bureau who have completed training as specified by the commissioner are vested with the power to issue summons and complaints to enforce the provisions of part 2 of article 9 of title 18, C.R.S., and article 80 of this title, as granted peace officers under section 16-2-104, C.R.S., and shall be designated as peace officers, as described in sections 16-2.5-101 and 16-2.5-118, C.R.S.

(5) The commissioner may, in his discretion, revoke the commission of any agent.

(6) The commissioner may in his discretion determine classifications and subclassifi-

cations for commissions of agent.

(7) Agents authorized to investigate cases involving livestock shall be employees of the division or the division of brand inspection of the department or any sheriffs when appointed and within their jurisdiction.

(8) All commissions issued by the commissioner shall expire on the anniversary date of issuance.

(9) A commission may, in the discretion of the commissioner, be renewed.

(10) All commissions shall be approved by the state agricultural commission.

Source: L. 90: Entire article R&RE, p. 1606, § 1, effective July 1. L. 94: (4) amended, p. 1312, § 14, effective July 1. L. 2003: (4) amended, p. 1628, § 60, effective August 6.

Editor's note: This section is similar to former §§ 35-42-103 and 35-42-104 as they existed prior to 1990.

35-42-108. Care of confined animal. (1) Except as authorized by law, no animal shall be confined without an adequate supply of food and water. If any animal is found to be confined without adequate food or water, it shall be lawful for any officer or agent of the bureau, a peace officer within his jurisdiction, or a licensed veterinarian to, from time to time as may be necessary, enter into any and upon any area or building where such animal is confined and supply it with adequate food and water; except that such entry shall not be made into any building which is a person's residence, unless by search warrant or court order.

(2) Such officer, agent, peace officer, or veterinarian shall not be liable in any action for such entry.

(3) Notice of the entry and care shall be given by posting such notification at an entrance to or at a conspicuous place upon such area or building where such animal is confined.

(4) In the case of companion animals, if such animal is not cared for by a person other than an agent or officer of the bureau or a peace officer or veterinarian within seventy-two hours of the posting of said notification, such animal shall be presumed to have been abandoned under circumstances in which the animal's life or health is endangered.

Source: L. 90: Entire article R&RE, p. 1607, § 1, effective July 1.

Editor's note: This section is similar to former § 35-42-105 as it existed prior to 1990.

35-42-109. Protection of animals mistreated, neglected, or abandoned. (1) No animal shall be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered.

(2) (a) The commissioner may take charge of, provide for, or remove from the area or building where found any companion animal found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(b) Pursuant to court order, the commissioner may take charge of, provide for, or remove from the area or building where found any livestock found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(3) (a) The commissioner shall cause to be served upon the owner:

(I) If the owner is known and residing within the jurisdiction wherein the animal is found, written notice at least five days prior to the hearing of the time and place of the hearing;

(II) If the owner is known but residing out of the jurisdiction where such animal is found or if the commissioner is unable after reasonable attempts to serve the owner, written notice by any method, including posting at least five days prior to the hearing at a place provided for public notices in the jurisdiction wherein such hearing shall be held, or service of process shall be given.

(b) If the owner is not known, the commissioner shall cause to be published, in a newspaper of general circulation in the jurisdiction wherein such animal is found, notice of the hearing, and shall further cause notice of the hearing to be posted at a place provided for public notices in the jurisdiction wherein such hearing shall be held, at least five days prior to the hearing.

(4) Such hearing shall be held promptly after the date of the seizure of the animal.

(5) (a) The commissioner may, in his discretion, provide for such animal until judgment by the court.

(b) The court may order the animal sold and the proceeds deposited in the registry of the court pending a decision.

(c) The court may adjudge that the owner is a person able to adequately provide for such animal and a person fit to own the animal, in which case the animal shall be returned to the owner after all reasonable expenses of any food, shelter, and care provided by the commissioner have been paid; except that, if such expenses are not paid within ten days of a court order adjudging the owner a person able to adequately provide for such animal and a person fit to own the animal, the commissioner may, in his discretion and without liability, dispose of the animal by selling it at public auction, placing it for adoption in a suitable home, giving it to a suitable animal shelter, or humanely destroying it as deemed proper by the commissioner.

(d) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the estray fund, created pursuant to section 35-41-102.

(e) At least six days prior to disposing of the animal, the commissioner shall provide written notice to the owner at his last-known address of the time and place of the disposition of the animal.

(6) (a) If the owner is adjudged by the court a person unable to adequately provide for the animal or a person not fit to own the animal, then the court shall order that the animal be:

(I) Sold by the commissioner at public auction;

(II) Placed for adoption in a suitable home;

(III) Given to a suitable animal shelter;

(IV) Humanely destroyed as deemed proper by the court; or

(V) Disposed of in any other manner as deemed proper by the court.

(b) In no case shall the person adjudged unable to adequately provide for the animal or unfit to own the animal be allowed to purchase directly or indirectly the animal at any sale.

(c) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, with the remaining proceeds, if any, being paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the estray fund, created pursuant to section 35-41-102.

(7) Nothing in this section shall be construed to prohibit the destruction of an animal as provided in section 35-42-110.

(8) Any officer or agent of the bureau may lawfully interfere to prevent the perpetration of an act of mistreatment, neglect, abandonment, or cruelty, pursuant to part 2 of article 9 of title 18, C.R.S., which act occurs in his presence.

Source: L. 90: Entire article R&RE, p. 1607, § 1, effective July 1.

Editor's note: This section is similar to former §§ 35-42-106 and 35-42-108 as they existed prior to 1990.

35-42-110. Injured animals may be euthanized. Any agent of the bureau or peace officer, as described in section 16-2.5-101, C.R.S., may lawfully euthanize or cause to be euthanized, as defined in section 18-9-201 (2.7), C.R.S., any animal in his or her charge when, in the judgment of such agent or peace officer, and in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery. In the event a licensed veterinarian is not available, the animal may be euthanized if, by the written certificate of two persons, one of whom may be selected by the owner if the owner so requests, called to view the animal in the presence of the agent, the animal appears to be severely injured past recovery, severely disabled past recovery, severely diseased past recovery, or unfit for any useful purpose.

Source: **L. 90:** Entire article R&RE, p. 1609, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1625, § 47, effective August 6. **L. 2007:** Entire section amended, p. 726, § 6, effective July 1.

Editor's note: This section is similar to former § 35-42-107 as it existed prior to 1990.

35-42-111. Investigations - access - administrative subpoena. (1) The commissioner, upon his own motion or upon the complaint of any person, shall make any investigations necessary to ensure compliance with this article.

(2) (a) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access, upon consent or upon obtaining an administrative search warrant, to all buildings, yards, pens, pastures, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period.

Source: **L. 90:** Entire article R&RE, p. 1609, § 1, effective July 1.

Editor's note: This section is similar to former § 35-42-106 as it existed prior to 1990.

35-42-112. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and shall require that all actions causing the violation be ceased.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of this article.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon

involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(3) Whenever it appears to the commissioner upon sufficient evidence satisfactory to the commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted pursuant to this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule adopted pursuant to this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 90: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former § 35-42-106 as it existed prior to 1990.

35-42-113. Animal protection fund - creation. (1) There is hereby created an animal protection fund. Any donations collected for animal protection, any net proceeds from the sale of an animal pursuant to section 18-9-202.5 (4), C.R.S., and any moneys from restitution ordered for the expenses of the department of agriculture in selling and providing for the care of and provision for an animal disposed of under the animal cruelty laws in accordance with part 2 of article 9 of title 18, C.R.S., or this article shall be transmitted to the state treasurer, who shall credit the moneys to the animal protection fund. The general assembly shall make annual appropriations from that fund to the department of agriculture to aid in carrying out the purposes of this article; except that no such appropriations may be made for personal services.

(2) All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly through legislation.

Source: L. 90: Entire article R&RE, p. 1610, § 1, effective July 1. **L. 2006:** (1) amended, p. 895, § 3, effective August 7. **L. 2012:** (1) amended, (HB 12-1125), ch. 102, p. 346, § 4, effective September 1.

Editor's note: Section 5 of chapter 102, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to animals impounded on or after September 1, 2012.

35-42-114. Local regulation. The provisions of this article shall not be construed to limit or preempt additional regulation by any city, town, or city and county. Nothing in this article shall interfere with the authority of the department of public health and environment in the enforcement of part 7 of article 4 of title 25, C.R.S., or the department of agriculture in the enforcement of article 80 of this title.

Source: L. 90: Entire article R&RE, p. 1611, § 1, effective July 1. **L. 94:** Entire section amended, p. 1312, § 15, effective July 1; entire section amended, p. 2804, § 575, effective July 1.

Editor's note: Amendments to this section by Senate Bill 94-023 and House Bill 94-1029 were harmonized.

35-42-115. Dangerous dog registry - created - cash fund. (1) The bureau shall establish a statewide dangerous dog registry consisting of a database of information concerning microchip types and placement by veterinarians and licensed shelters in dangerous dogs pursuant to the provisions of section 18-9-204.5 (3) (e.5), C.R.S. The commissioner may promulgate such rules as may be necessary for the implementation of

this section.

(2) A veterinarian or licensed shelter that implants a microchip pursuant to the provisions of section 18-9-204.5 (3) (e.5) (III), C.R.S., shall provide to the bureau a veterinary record of the microchip. The bureau shall maintain each veterinary record provided in a registry on a statewide database.

(3) Each person who is ordered to identify his or her dangerous dog through microchip implantation shall pay to the bureau a nonrefundable dangerous dog microchip license fee of fifty dollars, as required in section 18-9-204.5 (3) (e.5) (IV), C.R.S. The bureau shall transmit all fees collected pursuant to this subsection (3) to the state treasurer who shall credit the same to the dangerous dog microchip licensure cash fund, referred to in this section as the "fund", which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the bureau for the costs incurred in implementing this section. The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2004: Entire section added, p.1762, § 4, effective July 1.

ARTICLE 42.5

Animal Shelters and Pounds

35-42.5-101. Duties and restrictions relating to shelters and pounds - legislative declaration.

35-42.5-101. Duties and restrictions relating to shelters and pounds - legislative declaration. (1) (a) (I) As used in this section, unless the context otherwise requires, an animal "shelter or pound" means a nonprofit private or publicly owned facility where stray, abandoned, lost, or unwanted pet animals are held and which facility contains four or more pet animals at any given time. "Pound or shelter" does not mean a breeding facility maintained for the express and sole purpose of supplying pet animals to entities for research. Before selling, giving, lending, or in any other manner providing a dog or cat to any private or public facility for use in medical or any other kind of experimentation, a pound or shelter shall care for such dog or cat for a minimum of two weeks, during which time such dog or cat shall be made available for adoption while the pound or shelter makes a reasonable effort to establish the identity of the owner of such dog or cat and, if such owner is identified, gives such owner notice regarding the taking and impounding of such animal and an opportunity to reclaim such animal. Such reasonable effort shall include contacting the owner if the dog or cat is wearing an identification tag.

(II) Pounds and shelters shall not participate in the practice known as "red tagging", which, for the purposes of this section, means the isolation, without opportunity for adoption, of healthy, amiable dogs and cats for research animal buyers. No dog or cat shall be designated as a candidate for medical or any other kind of experimentation unless such dog or cat has been made available for adoption during the two-week period it is cared for by the pound or shelter.

(III) If a pound or shelter provides dogs or cats to facilities for experimentation, such pound or shelter shall inform an owner who is relinquishing his dog or cat to the pound or shelter of such practice. The pound or shelter may charge a reasonable fee for housing the dog or cat during the two-week period the animal is cared for by the pound or shelter.

(b) For purposes of this subsection (1), "experimentation" includes any research, or testing, or the use of an animal for the training of students or medical personnel.

(2) Any officer or agent of the state bureau of animal protection created in article 42 of this title, or any peace officer, as described in section 16-2.5-101, C.R.S., may enforce the provisions of this section.

(3) Any person who violates the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) The general assembly finds and declares that the establishment of the standards and specifications set forth in this section are a matter of statewide concern.

Source: **L. 90:** Entire article added, p. 1614, § 1, effective July 1. **L. 94:** (1)(a)(I) amended, p. 1312, § 16, effective July 1. **L. 2002:** (3) amended, p. 1549, § 319, effective October 1. **L. 2003:** (2) amended, p. 1625, § 48, effective August 6.

Cross references: (1) For the description of peace officer, see § 16-2.5-101.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 43

Branding and Herding

PART 1

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PART 1

GENERAL AND ADMINISTRATIVE PROVISIONS

35-43-101. Brands on livestock - evidence. It is lawful to mark cattle and horses with the owner's brand. When animals are brought into this state from another state or a territory in transit from beyond the boundaries of this state, the brand, or a copy thereof, duly certified to by the proper officer in each state or territory, shall be received in evidence, with like force and effect as a brand duly recorded in this state.

Source: L. 13: p. 142, § 1. C.L. § 3117. CSA: C. 160, § 1. CRS 53: § 8-2-1. C.R.S. 1963: § 8-2-1.

35-43-102. Branding - evidence of ownership - penalty. Animals which are usually branded may be branded on either side with the owner's brand. No evidence of ownership by brands shall be permitted in any court in this state unless the brands are recorded as provided in section 35-43-105. Each drove of cattle or sheep which may be driven into or through any county of this state shall be plainly branded or marked with one uniform brand or mark. The cattle shall be so branded with the distinguishing ranch or road brand of the owner as to show distinctly in such places as the owner may adopt. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the state. Any such owner or person in charge of such drove being driven into or through the state who fails to comply with the provisions of this article shall be fined not less than fifty dollars nor more than three hundred dollars.

Source: G.L. § 2580. G.S. § 3171. R.S. 08: § 6351. C.L. § 3118. CSA: C. 160, § 2. CRS 53: § 8-2-2. C.R.S. 1963: § 8-2-2.

35-43-103. Earmarks. Any stock grower of this state may adopt and use an earmark. Such earmark shall be taken in evidence, in connection with the owner's recorded brand, in all suits at law or in equity in which the title to stock is involved. The earmark shall be made by cutting and shaping the ear of the animal so marked; but in no case shall the person so marking an animal cut off more than one-half of the ear so marked; neither shall anyone mark by cutting an ear on both sides to a point.

Source: G.L. § 2586. G.S. § 3173. R.S. 08: § 6352. C.L. § 3119. CSA: C. 160, § 3. CRS 53: § 8-2-3. C.R.S. 1963: § 8-2-3.

35-43-104. Brand distinctions - recording office. No brand shall be used by more than one person, association, or corporation, nor shall any brand be recorded in this state elsewhere than in the office of the state board of stock inspection commissioners, except as provided in section 35-43-107.

Source: L. 13: p. 142, § 2. C.L. § 3120. CSA: C. 160, § 4. CRS 53: § 8-2-4. C.R.S. 1963: § 8-2-4.

35-43-105. Fee to record brands - unlawful use - penalty. (1) Any person, association, or corporation desiring to adopt a brand, not then being the recorded brand of another person, association, or corporation, shall forward to the state board of stock inspection commissioners a facsimile of the desired brand, together with a written application to adopt such brand, and shall accompany the same with a fee in an amount determined by the board by rule. Upon receipt of the facsimile and fee, the board shall record the brand, unless the brand stands of record as or is in conflict with that of some other person, association, or corporation, in which case the board shall not record the brand but shall return the facsimile to the forwarding party.

(2) It is unlawful for any person, association, or corporation to brand or cause to be branded any livestock with a brand which has not been recorded with the state board of stock inspection commissioners, as provided in subsection (1) of this section, or with a brand which has been previously recorded by another person, association, or corporation. When any owner of a recorded brand in use in this state moves his cattle, branded with his own brand, to a new and different range or locality in this state within which territory there is in use a conflicting or similar recorded brand, the state board of stock inspection commissioners may order such recorded brand owner so moving to a new range or locality to discontinue the use of his recorded brand in that locality; and the board, at its discretion, may cancel such brand ordered to be so discontinued.

(3) Any person, association, or corporation or any employee thereof who violates any of the provisions of subsection (2) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

Source: L. 13: p. 142, § 3. L. 19: p. 510, § 1. C.L. § 3121. CSA: C. 160, § 5. L. 45: p. 668, § 1. L. 47: p. 848, § 1. CRS 53: § 8-2-5. L. 55: p. 154, § 1. C.R.S. 1963: § 8-2-5. L. 67: p. 142, § 1. L. 73: p. 218, § 1. L. 2004: (1) amended, p. 647, § 6, effective July 1.

35-43-106. Certified copy of brand - fee. Upon the recording of any brand, the owner thereof shall be entitled to one certified copy of the record of such brand from the state board of stock inspection commissioners, the certificate to be signed by the brand commissioner or the secretary of the board. Additional certified copies of said record may be obtained by anyone upon the payment of one dollar for each copy.

Source: L. 13: p. 143, § 4. C.L. § 3122. CSA: C. 160, § 6. CRS 53: § 8-2-6. C.R.S. 1963: § 8-2-6.

35-43-107. Recording by county clerk and recorder. It is unlawful for the county clerk and recorder of any county in this state to record any brand, unless previously recorded in the office of the state board of stock inspection commissioners.

Source: L. 13: p. 143, § 5. C.L. § 3123. CSA: C. 160, § 7. CRS 53: § 8-2-7. C.R.S. 1963: § 8-2-7.

35-43-108. Brand book. It is the duty of the state board of stock inspection commissioners, from time to time as it may be necessary, to cause to be published in book form a list of all brands on record at the time of such publication. The board, at its discretion, may cause to be issued a supplement to the brand book issued, containing the additional brands or changes in ownership of brands between the time of the last publication and the time of issuing such supplement, for the use of the department and its employees. Such brand book and supplements thereto shall contain a facsimile of every brand recorded, together with the owner's name and post-office address. Said records shall be arranged in convenient form for reference. Said books and supplements may be sold to the general public at approximate cost. The brand book and other publications circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 13: p. 143, § 6. C.L. § 3124. CSA: C. 160, § 8. L. 49: p. 690, § 1. CRS 53: § 8-2-8. L. 55: p. 155, § 2. C.R.S. 1963: § 8-2-8. L. 64: p. 126, § 31. L. 83: Entire section amended, p. 843, § 72, effective July 1.

35-43-109. Brands personal property - recording by board - rules - effect. Any brand recorded shall be the property of the person, association, or corporation causing such record to be made and shall be subject to sale, assignment, transfer, devise, and descent as

personal property. Instruments of writing evidencing the sale of such brand, assignment, or transfer shall be recorded by the state board of stock inspection commissioners, and the fee for recording such sale, assignment, or transfer shall be in an amount determined by the board by rule. The recording of such instruments of writing shall have the same force and effect as to third parties as the recording of instruments affecting real estate, and a certified copy of the record of any such instrument may be introduced in evidence the same as is provided for the certified copies of instruments affecting real estate.

Source: L. 13: p. 144, § 7. C.L. § 3125. CSA: C. 160, § 9. CRS 53: § 8-2-9. L. 55: p. 155, § 3. C.R.S. 1963: § 8-2-9. L. 67: p. 142, § 2. L. 73: p. 218, § 2. L. 2004: Entire section amended, p. 648, § 7, effective July 1.

ANNOTATION

Recorded brand is property which shall be subject to sale, assignment, transfer, devise, and descent, as personal property. The recording of such instruments of writing shall have the same force and effect as to third parties as the recording of instruments affecting real estate

and a certified copy of the record of any such instrument may be introduced in evidence the same as is provided for the certified copies of instruments affecting real estate. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

35-43-110. Proof of ownership - evidence. In all suits at law or in equity or in any criminal proceeding when the title to animals is involved or proper to be proved, the certified copy provided for in section 35-43-106 shall be prima facie evidence of the ownership of such animal by the person whose brand it may be. Proof of the right of any person, association, or corporation to use such brand shall be made by a copy of the record of same, certified to by the state board of stock inspection commissioners by its secretary or the brand commissioner.

Source: L. 13: p. 144, § 8. C.L. § 3126. CSA: C. 160, § 10. CRS 53: § 8-2-10. C.R.S. 1963: § 8-2-10.

ANNOTATION

Registered stock brand is prima facie evidence of ownership of cattle bearing it. *Thomas v. Seloom*, 80 Colo. 189, 250 P. 381 (1926); *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

But such evidence is not conclusive for it would result in a strange paralysis of the livestock market, if, after the brand had been burned on the hide of an animal, such brand should be taken as a conclusive presumption of ownership;

if it were so, no branded animal could ever be sold. *Howry v. Sigel-Campion Livestock Comm'n*, 80 Colo. 143, 249 P.-658 (1926); *Cahill v. People*, 111 Colo. 29, 137 P.2d 673 (1943).

It may, therefore, be overcome by other evidence of ownership. *Debord v. Johnson*, 11 Colo. App. 402, 53 P. 255 (1898).

Applied in *Thomas v. Seloom*, 80 Colo. 189, 250 P. 381 (1926).

35-43-111. Earmarking sheep and hogs. Any owner of sheep or hogs may use an earmark, tag, or brand to designate ownership of and title to the same, which shall be subject to the provisions of this article in respect to brands.

Source: L. 13: p. 145, § 10. C.L. § 3127. CSA: C. 160, § 11. CRS 53: § 8-2-11. C.R.S. 1963: § 8-2-11.

35-43-112. Other animals - earmarks. Owners of animals other than sheep or hogs in this state may use earmarks, and these earmarks shall be taken in evidence in connection with the owner's recorded brand in all suits at law or in equity or in any criminal proceedings when the title to such property is involved or proper to be proved.

Source: L. 13: p. 145, § 11. C.L. § 3128. CSA: C. 160, § 12. CRS 53: § 8-2-12. C.R.S. 1973, § 8-2-12.

35-43-113. Publication of brands and transfers. Upon the first of every month or as soon thereafter as possible, the state board of stock inspection commissioners shall cause to be exhibited in the office of the county clerk and recorder in all counties in the state and post, when permissible, in Colorado licensed livestock markets a list showing all the brands and transfers recorded for the previous calendar month. Said list shall show a facsimile of the brand, the name of the owner, and the owner's post-office address, county, and state. The list shall remain posted until the following month when the new list is posted. Complete brand records shall be kept on file for inspection by the public at the office of each county clerk and recorder, and also kept on file by all local brand inspectors. The list shall also be published in the official state livestock paper or publication required under section 35-44-109.

Source: L. 13: p. 145, § 12. C.L. § 3129. CSA: C. 160, § 13. CRS 53: § 8-2-13. L. 63: p. 184, § 1. C.R.S. 1963: § 8-2-13. L. 71: p. 163, § 1.

35-43-114. Fees - disposition - report. All fees and money collected by the state board of stock inspection commissioners shall be deposited in the brand inspection fund unless otherwise provided by law. The board shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the board.

Source: L. 13: p. 145, § 13. C.L. § 3130. CSA: C. 160, § 14. CRS 53: § 8-2-14. C.R.S. 1963: § 8-2-14. L. 64: p. 126, § 32. L. 83: Entire section amended, p. 843, § 73, effective July 1. L. 2002: Entire section amended, p. 879, § 11, effective August 7.

Cross references: For the brand inspection fund, see § 35-41-102.

35-43-115. Assessment of brands - rules. (1) (a) To revise and disencumber the brand records of unused brands and to provide revenues with which to publish new brand books and otherwise assist in the operational cost of the division of brand inspection, the state board of stock inspection commissioners has the authority to impose an assessment and, when applicable, a late fee in an amount determined by the board by rule on every brand recorded in the office of the board on or before January 1, 2002, to cover the five-year period beginning on January 1, 2002, and ending on December 31, 2006, and like assessments covering every five years thereafter; except that, notwithstanding any other requirement of this section:

(I) The board may temporarily change the period of a brand's assessment to one, two, three, or four years so that approximately equal numbers of brands are subsequently assessed for five-year periods in each successive five-year period; and

(II) If the period of an assessment is changed pursuant to subparagraph (I) of this paragraph (a):

(A) The fee for the shortened assessment period shall be proportionately decreased; and

(B) The subsequent assessment period shall revert to five years.

(b) It is the duty of the board to notify every owner of a recorded brand of the assessment authorized by paragraph (a) of this subsection (1) through the United States mail by letter addressed to the owner at the owner's post-office address as given in the brand records. The assessment shall be due and payable within ninety days after January 1 of the assessment year. If any owner of a recorded brand fails or refuses to pay the assessment within the ninety days, the board may mail a second notice by certified mail and impose a late fee. If, within ninety days after the second mailing, any owner of a recorded brand fails or refuses to pay such assessment and late fee, the brand shall be cancelled from the valid registry of livestock brands in the office of the board and may be reissued and recorded as

a new brand after the expiration of three years from the date of such cancellation. The board shall give a receipt for any such payment.

(2) Repealed.

(3) As to any brand recorded prior to the beginning of any assessment period, the state board of stock inspection commissioners shall require one payment of all assessments for the entire five-year period. As to any brand recorded on or after the commencement of any assessment period, the state board of stock inspection commissioners shall make the assessment for the year or fractional part of the year in which the brand is recorded and for the remaining years within that five-year period and shall require one payment of all such assessments.

(4) All moneys collected by the state board of stock inspection commissioners from brand assessments shall be credited to a separate account within the brand inspection fund to be known as the brand assessment account. All moneys credited to such account and all interest earned on investments from moneys credited to such account shall be a part of the brand assessment account and shall be available for appropriation by the general assembly for purposes provided by law.

Source: L. 13: p. 146, § 16. L. 19: p. 508, § 1. C.L. § 3133. L. 27: p. 663, § 1. CSA: C. 160, § 17. CRS 53: § 8-2-15. L. 55: p. 156, § 4. L. 61: p. 178, § 1. C.R.S. 1963: § 8-2-15. L. 65: p. 222, § 1. L. 67: p. 142, § 3. L. 73: p. 219, § 3. L. 76: Entire section R&RE, p. 747, § 1, effective May 7. L. 77: (4) added, p. 1612, § 1, effective July 1. L. 79: (1) amended, p. 1332, § 1, effective May 18. L. 81: (2) amended, p. 1709, § 2, effective July 1. L. 89: (1) and (2) amended, p. 1404, § 2, effective May 2. L. 98: (1) and (3) amended, p. 264, § 3, effective August 5. L. 2004: (1) amended, p. 648, § 8, effective July 1. L. 2007: IP(1)(a) and (1)(b) amended, p. 646, § 1, effective April 26.

Editor's note: Subsection (2)(b) provided for the repeal of subsection (2), effective December 31, 1991. (See L. 89, p. 1404.)

Cross references: For the brand inspection fund, see § 35-41-102.

35-43-115.5. Abandoned brands - procedure - sale - proceeds. (1) Any brand that has been cancelled for nonpayment of the assessment pursuant to section 35-43-115 (1) and that, as of June 30 of any assessment year, has remained unclaimed for at least five years since the date of cancellation shall be presumed abandoned, and all claims or interests in such brand shall be deemed forfeited.

(2) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the state board of stock inspection commissioners shall adopt rules governing the publication and sale of abandoned brands. Such rules shall include, without limitation, provisions for the publication of a notice of abandoned brands and procedures for the public sale of such brands.

(3) The purchaser of an abandoned brand at a public sale shall take all rights to the brand free and clear of all liens and encumbrances of the prior owner or of any other person. The state board of stock inspection commissioners shall provide all documents necessary to effectuate the transfer of ownership of the brand.

(4) The proceeds of the sale of an abandoned brand, net of expenses of the sale, shall be credited to the brand assessment account in the brand inspection fund.

Source: L. 98: Entire section added, p. 265, § 4, effective August 5.

35-43-116. Wrongful branding - penalty. If any person, association, or corporation willfully and knowingly brands, or causes to be branded, an animal which is the property of another with his or her brand or any brand which is not the recorded brand of the owner or willfully and knowingly effaces, defaces, or obliterates any brand or mark upon such an animal, such person or any officer or director of any such association or corporation commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 13: p. 144, § 9. C.L. § 3134. CSA: C. 160, § 18. CRS 53: § 8-2-16. C.R.S. 1963: § 8-2-16. L. 73: p. 1394, § 3. L. 79: Entire section amended, p. 704, § 84, effective July 1. L. 89: Entire section amended, p. 848, § 127, effective July 1. L. 2002: Entire section amended, p. 1549, § 320, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-43-117. Use of false brand - damages. Any person who brands or marks, or causes to be branded or marked, any animal which is the property of another with his brand or any brand which is not the recorded brand of the owner or effaces, defaces, or obliterates any brand or mark upon any animal is guilty of theft and, upon conviction thereof, shall be liable to the owner thereof for three times the value of the animal so branded or marked or upon which the brand or mark has been effaced, defaced, or obliterated. Payment of the forfeiture provided in this section shall not entitle the person so branding, effacing, defacing, or obliterating a brand to the property right in the animal so branded or upon which the brand was effaced, defaced, or obliterated, but such animal shall be surrendered to the proper owner.

Source: G.L. § 2582. G.S. § 3177. R.S. 08: § 6368. C.L. § 3136. CSA: C. 160, § 20. CRS 53: § 8-2-17. C.R.S. 1963: § 8-2-17. L. 73: p. 1395, § 4.

ANNOTATION

Criminal intent will be presumed upon proof of use of false brand, although the defendant may show that he acted in good faith

and with innocent motives. *Bradley v. People*, 8 Colo. 599, 9 P. 783 (1885).

35-43-118. Maverick defined - branding penalty. (1) All neat cattle and horses found running at large in this state without a mother and upon which there is neither mark nor brand shall be deemed a maverick and shall be sold to the highest bidder for cash at such time and place and under such rules and orders as the state board of stock inspection commissioners prescribes. Nothing in this section shall be construed to apply to domestic or blooded stock owned and kept in cities or towns or on private farms that may stray upon the open range, and all such animals that are claimed, identified, and proven may be reclaimed.

(2) Any person who marks, brands, or causes to be marked or branded, or in any way converts to his use any animal known and designated by law as a maverick, if not by law authorized to do so, or who knowingly allows such marking, branding, or conversion, as is prohibited by this section, to be done by his employee or agent in his behalf is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than three months nor more than one year.

Source: L. 1887: p. 426, § 1. R.S. 08: § 6372. C.L. § 3138. CSA: C. 160, § 22. L. 53: p. 595, § 1. CRS 53: § 8-2-18. C.R.S. 1963: § 8-2-18.

35-43-119. Stock mixed with drove - penalty. When the stock of any resident intermixes with any drove of animals, it is the duty of any drovers or persons in charge to cut out and separate such stock from said drove immediately, except in case of sheep and horses, which shall be driven to the nearest suitable corral to be separated. Any person, either owner or drover, or otherwise connected with the management of such drove, who neglects to comply with the provisions of this section, shall be fined not more than five hundred dollars for every offense, and shall be liable to indictment for theft.

Source: G.L. § 2588. G.S. § 3181. R.S. 08: § 6373. C.L. § 3139. CSA: C. 160, § 23. CRS 53: § 8-2-19. C.R.S. 1963: § 8-2-19.

Cross references: For theft generally, see part 4 of article 4 of title 18; for theft of livestock, see § 35-43-128.

35-43-120. Trespassing on lands - injuring resident - penalty. (1) It is the duty of any person owning or having charge of any drove of cattle, horses, or sheep, who when driving the same into or through any county of Colorado of which the owner is not a resident or landowner and where the land in such county is occupied and improved by settlers and ranchers, to prevent the same from mixing with the cattle, horses, or sheep belonging to the actual settlers and also to prevent said drove of cattle, horses, or sheep from trespassing on such land as may be the property or in the possession of the actual settler and used by him for the grazing of animals or the growing of hay or other crops or from doing injury to ditches.

(2) Any owner or person in charge of any such drove of stock who willfully injures any resident of the state by driving such drove of stock from the public highway and herding the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. The owner or person in charge of the drove so trespassing shall be liable for the damages done to the settler.

Source: G.L. § 2590. G.S. § 3184. R.S. 08: § 6374. C.L. § 3140. CSA: C. 160, § 24. CRS 53: § 8-2-20. C.R.S. 1963: § 8-2-20.

Cross references: For recovery for trespass, see § 35-46-102.

35-43-121. Herding sheep near towns. (Repealed)

Source: G.L. § 2557. G.S. § 3137. R.S. 08: § 6377. C.L. § 3143. CSA: C. 160, § 27. CRS 53: § 8-2-23. C.R.S. 1963: § 8-2-23. L. 95: Entire section repealed, p. 200, § 17, effective April 13.

35-43-122. Penalty. (Repealed)

Source: G.L. § 2558. G.S. § 3138. R.S. 08: § 6378. C.L. § 3144. CSA: C. 160, § 28. CRS 53: § 8-2-24. C.R.S. 1963: § 8-2-24. L. 64: p. 204, § 5. L. 2005: Entire section repealed, p. 781, § 70, effective June 1.

35-43-123. Thoroughbred rams must be herded. It is the duty of any owner or agent of any owner of thoroughbred rams of any description to herd them or keep them enclosed. Any owner or agent who refuses to comply with the provisions of this section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

Source: L. 1879: p. 190, § 1. G.S. § 3139. R.S. 08: § 6379. C.L. § 3145. CSA: C. 160, § 29. CRS 53: § 8-2-27. C.R.S. 1963: § 8-2-27.

35-43-124. Fines paid into school fund. Any fines arising from a violation of section 35-43-123 shall be paid into the school fund of the county in which such violation occurs.

Source: L. 1879: p. 190, § 2. G.S. § 3140. R.S. 08: § 6380. C.L. § 3146. CSA: C. 160, § 30. CRS 53: § 8-2-28. C.R.S. 1963: § 8-2-28.

35-43-125. No hogs to run at large. No hog or swine shall be permitted to run at large, and the owner of any hog or swine trespassing on the property of any person is liable in treble the damages occasioned by such trespass and a fine of not less than five dollars nor more than ten dollars for each offense.

Source: G.L. § 2591. G.S. § 3175. R.S. 08: § 6386. C.L. § 3242. CSA: C. 160, § 159. CRS 53: § 8-2-29. C.R.S. 1963: § 8-2-29.

Cross references: For recovery for trespass, see § 35-46-102.

ANNOTATION

Railroad not liable for injury to animals at large. Where animals are at the time of an accident, running at large, contrary to the provisions of this section, and the injury thereto results without willful or gross negligence on

part of the railroad company, it is not liable in damages. *Denver & R. G. Ry. v. Stewart*, 1 Colo. App. 227, 28 P. 658 (1891).

Applied in *Smith v. Smith*, 16 Colo. App. 333, 65 P. 401 (1901).

35-43-126. Dog worrying stock. Any dog found running, worrying, or injuring sheep, cattle, or other livestock may be killed, and the owner or harbinger of such dog shall be liable for all damages done by it.

Source: G.L. § 2578. G.S. § 3176. R.S. 08: § 6387. C.L. § 3152. CSA: C. 160, § 40. CRS 53: § 8-2-33. C.R.S. 1963: § 8-2-33. L. 73: p. 1395, § 5.

ANNOTATION

“Worrying”, as used in this section, may be defined as follows: “To run after; to chase; to bark at”. *Failing v. People*, 105 Colo. 399, 98 P.2d 865 (1940).

Authorization to kill contains no limitations with respect to vicious dogs or any stipu-

lation that an effort first be made to drive them away by warning shots or otherwise, or that they may be killed only after damage is done to cattle. *Failing v. People*, 105 Colo. 399, 98 P.2d 865 (1940).

35-43-127. Skinning carcass without right. Any person who skins or removes from the carcass any part of the skin, hide, or pelt of any cattle or sheep without permission from the owner is guilty of theft and, upon conviction thereof, shall be punished in the manner provided by law for the punishment of theft. Nothing in this section shall be deemed to prevent the skinning of animals killed by railroad companies by the employees of any railroad company by which such stock may have been killed.

Source: L. 68: p. 41, § 1. C.R.S. 1963: § 8-2-38.

Cross references: For theft generally, see part 4 of article 4 of title 18; for theft of livestock, see § 35-43-128.

35-43-128. Theft of certain animals - penalty. Any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner deprives the owner of the immediate possession of any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, or any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner applies to the person's own use any cattle, horses, mules, goats, sheep, asses, or swine, either live or slaughtered, or any portion of the slaughtered carcass thereof, the owner of which is unknown, or any person who knowingly purchases from anyone not having the lawful right to sell and dispose of the same any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, commits a class 4 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 68: p. 41, § 1. C.R.S. 1963: § 8-2-39. L. 77: Entire section amended, p. 883, § 61, effective July 1, 1979. L. 89: Entire section amended, p. 848, § 128, effective July 1. L. 94: Entire section amended, p. 1724, § 26, effective July 1. L. 2002: Entire section amended, p. 1550, § 321, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Culpable mental state is essential element of the crime defined by this section. *People v. Burns*, 197 Colo. 284, 593 P.2d 351 (1979).

But elements of common-law theft not necessarily required. The fact that the crime is entitled theft of animals does not require that the elements of common-law theft be included in the crime. *People v. Burns*, 197 Colo. 284, 593 P.2d 351 (1979).

Distinction from general theft constitutional. The distinction made by the general as-

sembly, in enacting this section, between a general theft and theft of animals is not arbitrary or unreasonable, rather, it displays a legitimate legislative judgment; thus, there is no violation of equal protection in providing different penalties for the two different thefts. *People v. Burns*, 197 Colo. 284, 593 P.2d 351 (1979).

Applied in *Spann v. People*, 193 Colo. 53, 561 P.2d 1268 (1977).

35-43-129. Branding of calves required - exceptions. (1) It is unlawful for any person, company, or corporation to sell, offer for sale, slaughter, or move, either within the state or to a destination outside of Colorado, any calf under weaning age that is not branded with a Colorado recorded brand of the owner of the mother cow. A brand upon any calf shall be past the peeling state at the time that a calf is sold, offered for sale, slaughtered, or moved, except in the following cases:

- (a) When the calf is accompanied by its branded ownership-proven mother;
- (b) When the calf is accompanied by a current brand certificate issued by a duly authorized Colorado brand inspector after inspection at a time when such calf is with its branded ownership-proven mother;
- (c) When the calf is a registered purebred breed or pure dairy breed, but this exception shall not apply to a crossbred calf.

(2) Any person, company, or corporation whose principal operation consists of feeding cattle for slaughter or operating a dairy may apply to the state board of stock inspection commissioners for a permit authorizing such person, company, or corporation to sell or offer for sale a calf under ten days old, which was born at the dairy or in the feed lot, without meeting the requirements of subsection (1) of this section. Such application shall be accompanied by a description of the operation. Upon determining that the applicant is qualified, the board shall issue a numbered permit to the applicant. Any calf under ten days old which is sold or offered for sale shall have affixed an eartag, supplied by the board, which bears the applicant's permit number. A calf sold under the provisions of this subsection (2) shall be accompanied by a duly executed bill of sale containing the owner's permit number and signed by the dairy owner or the feed lot owner.

(3) If a Colorado brand inspector is called to inspect an unbranded or freshly branded calf with its mother, any mileage expense shall be paid by the owner in addition to any brand inspection fee.

(4) Any person, company, or corporation who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars and by imprisonment in the county jail for not more than ninety days. For a second or subsequent violation, such person, company, or corporation shall be punished by a mandatory fine of not less than five hundred dollars and by imprisonment in the county jail for of not less than ten days.

(5) Unbranded calves subject to this article, when found by brand inspectors at public livestock markets or at shipping points, shall be handled as estrays or questionable ownership livestock according to sections 35-43-118 and 35-53-107.

35-43-130. Cattle in feedlots. (1) A Colorado brand inspector shall inspect all cattle entering a Colorado custom feedlot for feeding under a custom contract if the cattle are not accompanied by a brand certificate or valid documentation of purchase listing all brands, or no brands. In addition, all cattle entering Colorado for grazing purposes under a leased grazing agreement, owned by a nonresident, shall also be inspected by a duly authorized Colorado brand inspector. The brand inspector shall issue a certificate of inspection to the proven owner and a copy of such certificate to the custom feedlot operator or ranch manager after ownership is established and before the cattle are mixed with any other cattle or turned loose for grazing. Upon completion of the inspection, said inspector shall collect an inspection fee in the amount prescribed by the state board of stock inspection commissioners pursuant to section 35-41-104. If the cattle are carrying more than two consistent brands, the owner shall mark or brand all of his cattle with the same brand, with one of the two existing brands, with a brand of valid registry of the owner, with an ear tag specifically identifying each animal to a specific feedlot, or otherwise identify the cattle as prescribed by the board. Evidence of this brand or permanent mark shall be shown on the certificate of inspection in addition to brands or no brands found on the inspected cattle for future reference of valid proven ownership. When ear tags are utilized, each ear tag shall be legible and at least one inch in height and two inches in width.

(2) Any lessee, lessor, commercial feedlot owner, or established livestock owner who violates any of the provisions of this section commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S. For a second or subsequent violation, such person described in this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 75:** Entire section added, p. 1349, § 1, effective July 1. **L. 81:** Entire section amended, p. 1710, § 3, effective July 1. **L. 89:** (1) amended, p. 1406, § 6, effective May 2. **L. 2002:** (2) amended, p. 1550, § 322, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 2

BRAND INSPECTION

Editor's note: This part 2 was added with relocations in 2009 containing provisions of some sections formerly located in article 11 of title 12. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 2, see the comparative tables located in the back of the index.

Cross references: For custom processing of meat animals, see article 33 of this title.

35-43-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Board" means the state board of stock inspection commissioners, created in section 35-41-101.

(2) "Department" means the Colorado department of agriculture, created in section 24-1-123, C.R.S.

(3) "Livestock" means all cattle, calves, horses, mules, and donkeys.

Source: **L. 2009:** Entire part added with relocations, (SB 09-151), ch. 89, p. 342, § 2, effective July 1.

35-43-202. Brand inspections - custom processing houses - packing plants - feedlots - acceptable forms of evidence - rules. (1) The board may, during regular business hours, inspect the records, brands, bills of sale, hides, horns, and other items related to proving ownership of or ascertaining the identity of slaughtered livestock at any custom processing house or packing plant licensed by the department or by the United States department of agriculture.

(2) Pursuant to its authority under section 35-41-101 (3), the board may adopt rules in furtherance of this part 2, including rules governing record-keeping, contact information, the contents of bills of sale and other records of transfers of livestock or carcasses, the mixing of inspected and uninspected livestock, hide retention, hide exhibition, and brand inspection.

(3) No person shall slaughter any livestock purchased in Colorado that have not been inspected for brands by an authorized Colorado brand inspector immediately prior to slaughter.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 343, § 2, effective July 1.

35-43-203. Requirements for slaughterer business. (1) Every person carrying on the trade or business of a slaughterer of livestock in this state:

- (a) Shall maintain an established place of business;
- (b) Shall not slaughter livestock on the open range;
- (c) Shall require from all sellers of livestock a bill of sale that gives a complete description of each animal so sold and purchased including marks, brands, age, weight, name of person from whom it was purchased or otherwise acquired, date, and place of purchase or acquisition;
- (d) Shall keep a true record of all livestock purchased or slaughtered, and of any carcass or part of a carcass purchased, in one or more special books kept for such purposes. Such records shall include a complete description of each such animal or carcass, including the approximate age and weight, breed and color, fire brands, earmarks, and any other identifying characteristics and the date of purchase and from whom such animal, carcass, or part of carcass was purchased.
- (e) Shall keep the hide and horns of each animal slaughtered for inspection for a period of thirty days after it is slaughtered except when written permission for sale or destruction of the same is given by a regular or special brand inspector prior to expiration of said period. A certified copy of the bill of sale shall accompany the hide when it is offered for sale.
- (f) Shall require any person from whom he or she purchases the carcass or any part thereof, not inspected by a state brand inspector immediately prior to slaughter, to exhibit the hide as provided in section 35-43-207;
- (g) Shall not receive any carcass or part of a carcass for storage unless each hide has been inspected and all meat stamped, if required, by the brand commissioner. This paragraph (g) shall not apply to any person who slaughters livestock that are officially inspected by the state brand inspector immediately prior to slaughter.
- (h) Shall not mix any cattle that are uninspected for brands by an authorized Colorado brand inspector with any livestock that have been inspected by a Colorado brand inspector just prior to slaughter.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 343, § 2, effective July 1.

35-43-204. Investigations. The board may investigate possible violations of this part 2 on the basis of a complaint or when the board has other reasonable grounds to believe that any person has violated any such provision.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 344, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-101 (4) as it existed prior to 2009.

35-43-205. Exemption - limitation. Every person carrying on the trade or business of a slaughterer of livestock in this state who is exempt from section 35-43-203 (1) (g) shall

not slaughter any livestock purchased in Colorado that have not been inspected for brands by an authorized Colorado brand inspector immediately prior to slaughter.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 344, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-101 (5) as it existed prior to 2009.

35-43-206. Records - hides - open to public view. The record provided for in section 35-43-203 (1) (d) and also the hide shall be open to the inspection of all persons for a period of thirty days, and it is unlawful for any slaughterer to refuse to permit such inspection or examination.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 344, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-103 as it existed prior to 2009.

35-43-207. Sales by persons other than slaughterers - requirements. It is unlawful for any person to sell or offer for sale or to possess, except as specifically provided in this article or in article 33 of this title, a carcass of livestock or any portion of such carcass without first exhibiting the hide intact and exposing the brand upon the hide, if any, to the purchaser. It is the duty of any such person selling or offering for sale any such carcass of livestock to preserve the hide of the same for a period of thirty days, unless the hide from such a carcass of livestock has been previously inspected and released by a duly authorized Colorado brand inspector, and to exhibit the same for inspection upon demand of any person.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 344, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-104 as it existed prior to 2009.

ANNOTATION

Annotator's note. Since § 35-43-207 is similar to § 12-11-104 as it existed prior to the 2009 amendment relocating article 11 of title 12 to part 2 of article 43 of title 35, relevant cases construing that provision have been included in the annotations to this section.

Section deemed constitutional. Eachus v. People, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

This section is in the nature of a police regulation. Eachus v. People, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

It was adopted by the general assembly in behalf of the livestock industry of Colorado, and is designed to assist in the prevention of larceny of livestock. Eachus v. People, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

This section, when construed with §§ 12-11-105 and 12-11-109, creates three separate

offenses. Eachus v. People, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

In a prosecution for violation of this section, an instruction which would require the people to prove a demand by some person to see the hide of the animal would be erroneous, since the section makes it unlawful for the seller of the carcass to offer the meat for sale without "first exhibiting" the hide. Eachus v. People, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

An instruction which charges the jurors that they must not only find that the defendant offered the beef for sale without at the time exhibiting the hide intact and exposing the brand thereon, if any, to the said purchaser, but that they also must find that defendant had failed to preserve the hide of the beef for a period of 30 days and, further, that the defendant had failed to exhibit the same for inspection of

any person within said period of 30 days, places an undue burden upon the prosecution and is to the great benefit and advantage of defendant. *Eachus v. People*, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

Where an information is substantially in the language of this section, even though it

contains several distinct offenses, and the jury of necessity must have found defendant guilty of all, he can claim no prejudice because of conviction of one. *Eachus v. People*, 124 Colo. 454, 238 P.2d 885 (1951), appeal dismissed per curiam, 342 U.S. 938, 72 S. Ct. 562, 96 L. Ed. 698 (1952).

35-43-208. Person killing for own use. Unless the hide has been previously inspected and released by a duly authorized Colorado brand inspector, it is unlawful for any person to possess or to kill livestock to obtain any part of the animal for his or her own use without preserving the hide of such animal intact with a complete unskinned tail attached thereto for a period of not less than thirty days, during which period the hide shall be presented upon the demand of any person.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 344, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-105 as it existed prior to 2009.

35-43-209. When hides admitted as evidence. If a hide is subsequently produced by or on behalf of a person who has butchered any livestock alleged to have been stolen and is claimed to be the hide of the animal killed, the hide shall be exhibited as soon as possible for inspection to the sheriff of the county in which the animal was butchered. No such hide shall be admitted in evidence nor shall evidence to identify such hide with the animal alleged to be stolen be received until the prosecution is given such reasonable opportunity as may be fixed by court to examine the hide and compare it with the meat.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 345, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-108 as it existed prior to 2009.

35-43-210. Inspection of hide. The sheriff or deputy sheriff of any county in this state and any regular or special brand inspector appointed by the board are hereby authorized and empowered to require any person who kills for his or her own use and consumption any livestock to produce for inspection the hide of any such livestock that has been killed within thirty days unless the livestock has been inspected and tagged prior to such demand for inspection. In the absence of the owner or proper corporate officer, the person in charge of the premises where the meat then is shall produce the hide for inspection upon demand.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 345, § 2, effective July 1.

Editor's note: This section is similar to former § 12-11-106 as it existed prior to 2009.

35-43-211. Grounds for search warrant. If a person who, within thirty days, has killed any livestock or, in that person's absence, the person in charge of the premises where the livestock was killed fails or refuses to produce the hide of the livestock, any sheriff, deputy, or regular brand inspector may seize and take possession of the meat of such livestock and hold the meat until the hide is produced and, before or after the seizure of the meat, may seek a search warrant for the theft of livestock and the meat thereof as the property of an unknown owner. The failure to produce such hide upon demand shall be sufficient grounds upon which to base the affidavit for the search warrant, and the procedure on complaint for a search warrant shall be as provided in part 3 of article 3 of title 16, C.R.S.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 345, § 2, effective July 1.

Editor’s note: This section is similar to former § 12-11-107 as it existed prior to 2009.

35-43-212. Violations - penalties. (1) Except as otherwise provided in this part 2, any person violating this part 2 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Except as otherwise provided in this part 2, any person that violates this part 2 within three years after a previous violation of this part 2 by that same person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) A person who unlawfully butchers an animal belonging to another person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 345, § 2, effective July 1.

Editor’s note: This section is similar to former § 12-11-109 as it existed prior to 2009.

35-43-213. Brand inspection - certificate - evidence. (1) Any livestock purchased for slaughter in Colorado from any source shall be inspected for brands and other identifying marks and a certificate issued by a brand inspector at the point of origin. Until the time of such inspection and certification, the person purchasing livestock shall hold the uninspected livestock separately and shall be responsible for the value of the livestock and the brand inspection fee until inspected and a certificate issued by a Colorado brand inspector.

(2) The only evidence of inspection at point of origin acceptable under this section shall be either the brand certificate issued and signed by the brand inspector who made the inspection or a current account of sale, showing the brands or other identifying characteristics carried by the livestock and issued by a custom meat processor licensed by the department or a packing plant licensed by the United States department of agriculture. Livestock purchased by private contract in states where brand inspection is not maintained shall be accompanied by a bill of sale showing brands and other identifying characteristics signed by the seller or the seller’s agent and witnessed by the buyer or the buyer’s agent.

(3) Cattle fed by packers, either in their individual feed lots or in commercial feed lots, are subject to this article.

Source: L. 2009: Entire part added with relocations, (SB 09-151), ch. 89, p. 346, § 2, effective July 1.

Editor’s note: This section is similar to former § 12-11-111 as it existed prior to 2009.

ARTICLE 44

Estrays

Cross references: For disposition of estrays taken by brand inspection officer, see § 35-53-108; for the “fence law”, see article 46 of this title; for laws pertaining to hogs running at large, see § 35-43-125; for laws pertaining to horses and mules running at large, see article 47 of this title; for powers of municipalities to restrain and impound estrays, see § 31-15-401 (1)(m).

35-44-101.	Definitions.	35-44-106.	Proceeds of sale - rules.
35-44-102.	Taking up estrays - notice.	35-44-107.	Custody of stray - claimant.
35-44-103.	When stray returned to owner.	35-44-108.	Who may take up estrays.
35-44-104.	Owner not found - advertise-ment.	35-44-109.	Official state livestock paper.
35-44-105.	Sale of estrays.	35-44-110.	Application as to municipali-ties.
		35-44-111.	Concealing stray - penalty.

35-44-112. Abandoned livestock.
35-44-113. Publication of notice - sale -
rules.

35-44-114. Disputed ownership - animal
deemed not alternative live-
stock.

35-44-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Estray" means any bovine animal, horse, mule, ass, or alternative livestock as defined in section 35-41.5-102 (1) found running at large upon public or private lands in the state of Colorado whose owner is either known or unknown in the section where found or which is outside the limits of its usual range or pasture. It is unlawful for any person, corporation, or company, or any of its employees or agents, to take into its custody any such estray and retain possession of the same, except as provided in this article.

Source: L. 03: p. 215, § 1. R.S. 08: § 6426. C.L. § 3230. CSA: C. 160, § 147. CRS 53: § 8-4-1. C.R.S. 1963: § 8-4-1. L. 69: p. 123, § 1. L. 94: (1) amended, p. 1710, § 8, effective July 1.

35-44-102. Taking up estrays - notice. No person shall take into his custody an estray animal unless the same is found trespassing upon lands owned, leased, or otherwise controlled by him. The state board of stock inspection commissioners or an authorized brand inspector representing said board has authority to move such estray animal to a safe and practical place within the immediate vicinity to be held during the legal advertising period. When any person takes into his custody an estray, within five days thereafter he shall make out a written description of such animal, setting forth all marks or brands appearing upon such animal and other marks of identity, such as color, age, size, sex, and possible owner, and forward the same by mail to the state board of stock inspection commissioners in Denver or notify the nearest authorized brand inspector. Any person having knowledge of any estray animal upon the public range may notify the state board of stock inspection commissioners, or any authorized brand inspector of said board, giving a description of said estray, and upon instructions from the board of stock inspection commissioners, or from an authorized inspector of the board, said estray shall be held by such person to be turned over to a duly authorized inspector of said board for disposition as the board may direct according to law.

Source: L. 03: p. 215, § 2. R.S. 08: § 6427. C.L. § 3231. CSA: C. 160, § 148. CRS 53: § 8-4-2. C.R.S. 1963: § 8-4-2. L. 69: p. 123, § 2.

35-44-103. When estray returned to owner. Upon receiving notice that any person has taken into his custody any estray animal, it is the duty of the state board of stock inspection commissioners to make or cause to be made an examination of the state brand records, and if from this record the name of the owner or probable owner can be determined, it shall forthwith notify him of the taking into custody of such estray. Upon the owner proving to the satisfaction of the state board of stock inspection commissioners that the estray animal is rightfully his, the state board shall issue to him an order to receive the same upon payment of any reasonable charges which may have been incurred in the care of said animal.

Source: L. 03: p. 216, § 3. R.S. 08: § 6428. C.L. § 3232. CSA: C. 160, § 149. CRS 53: § 8-4-3. C.R.S. 1963: § 8-4-3.

35-44-104. Owner not found - advertisement. If the brand commissioner appointed by the state board of stock inspection commissioners is unable to determine from the brand records and description who is the owner or probable owner of any reported estrays, he shall cause notice showing a facsimile of the brand and other identifying characteristics carried by the estray to be posted in the offices of all county clerks and recorders, and licensed livestock markets and in other conspicuous places in the area where said estray was found. Said livestock notice shall state when and where the estray animal was taken into custody.

In addition the brand commissioner shall cause a notice giving a general description of the estray to be placed in a local newspaper within the county where the estray is held, and said notice shall be carried in one regular issue only. Both notices shall state that unless the animal is claimed by the legal owner within ten days after the publication or posting of the notice, whichever is later, then the same shall be sold by the state board of stock inspection commissioners for the benefit of the owner when found.

Source: L. 03: p. 216, § 4. R.S. 08: § 6429. L. 17: p. 222, § 1. C.L. § 3233. CSA: C. 160, § 150. L. 53: p. 579, § 1. CRS 53: § 8-4-4. L. 63: p. 185, § 2. C.R.S. 1963: § 8-4-4.

35-44-105. Sale of estrays. If said estray animal is not claimed within ten days after the posting of estray notice, it shall be sold by the state board of stock inspection commissioners, through an authorized brand inspector of the board, in such manner as the board may direct. It is the duty of the brand inspector making such sale to give a bill of sale to the purchaser from the state board of stock inspection commissioners, signed by himself as inspector for the board, which bill of sale shall be legal evidence of the ownership of said animal by the purchaser thereof and shall be a legal and valid title to said animal.

Source: L. 03: p. 217, § 5. R.S. 08: § 6430. C.L. § 3234. CSA: C. 160, § 151. CRS 53: § 8-4-5. L. 63: p. 185, § 2. C.R.S. 1963: § 8-4-5.

35-44-106. Proceeds of sale - rules. The brand inspector making the sale of such estray shall return the proceeds of such sale to the state board of stock inspection commissioners, who shall pay the expenses incurred in taking into custody, holding, advertising, and selling such animal, and place the balance in the estray fund of said board, making a record of the same, showing the marks and brands and other means of identification of said animal, and giving the amount realized from the sale of same, which record shall be open to the inspection of the public. Should the owner of any estray that has been sold be found within three years after the sale of such animal, the net amount received from the sale of said estray, less a sum determined by the board by rule, for each estray, to be retained by the board, shall be paid to said owner upon the owner proving ownership to the satisfaction of the board.

Source: L. 03: p. 217, § 6. R.S. 08: § 6431. C.L. § 3235. CSA: C. 160, § 152. CRS 53: § 8-4-6. C.R.S. 1963: § 8-4-6. L. 79: Entire section amended, p. 1333, § 2, effective May 18. L. 2004: Entire section amended, p. 649, § 9, effective July 1.

Cross references: For the estray fund, see § 35-41-102.

35-44-107. Custody of estray - claimant. When any person takes into his custody any estray animal and sends a description of the same to the state board of stock inspection commissioners, said person shall be entitled to hold same lawfully until relieved of its custody by the state board of stock inspection commissioners. Should a claimant for said animal apply to the person who has custody of the estray for possession of the same, the said person shall at once notify the state board of stock inspection commissioners in writing of such application, and should the said board be satisfied that said applicant is the rightful owner, it shall forthwith issue an order authorizing said person in custody to deliver the estray to the owner, who may be required to pay any reasonable charges made by said person in custody. In case of a controversy as to what constitutes a reasonable charge, the state board of stock inspection commissioners shall fix the amount. The time of service for which said person may claim remuneration commences upon the date of notification made by the said person to the state board of stock inspection commissioners.

Source: L. 03: p. 218, § 7. R.S. 08: § 6432. C.L. § 3236. CSA: C. 160, § 153. CRS 53: § 8-4-7. C.R.S. 1963: § 8-4-7.

35-44-108. Who may take up estrays. It is unlawful for any person other than an authorized inspector of the state board of stock inspection commissioners to take into custody or retain possession of any estray, except as provided in section 35-44-107. Any person who takes into custody and retains possession of any estray without notifying the state board of stock inspection commissioners within the time as provided in this article is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 03: p. 218, § 8. **R.S. 08:** § 6433. **C.L.** § 3237. **CSA:** C. 160, § 154. **CRS 53:** § 8-4-8. **C.R.S. 1963:** § 8-4-8. **L. 91:** Entire section amended, p. 409, § 20, effective June 6. **L. 2002:** Entire section amended, p. 1550, § 323, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-44-109. Official state livestock paper. It is the duty of the state board of stock inspection commissioners to designate a livestock newspaper, of general circulation among the cattle and horse owners of the state, as the official state livestock paper, wherein all estray notices and advertisements of estrays may be legally made. In case of a change being made in the selection of such paper, the paper then publishing these notices shall publish a notice of said change for at least thirty days.

Source: L. 03: p. 218, § 9. **R.S. 08:** § 6434. **C.L.** § 3238. **CSA:** C. 160, § 155. **CRS 53:** § 8-4-9. **C.R.S. 1963:** § 8-4-9.

Cross references: For additional provisions concerning the state livestock paper, see §§ 35-43-113 and 35-50-109.

35-44-110. Application as to municipalities. Nothing in this article shall be construed to repeal any of the laws now in effect in regard to the impounding of estray animals by municipalities.

Source: L. 03: p. 219, § 10. **R.S. 08:** § 6435. **C.L.** § 3239. **CSA:** C. 160, § 156. **CRS 53:** § 8-4-10. **C.R.S. 1963:** § 8-4-10.

35-44-111. Concealing estray - penalty. Any person who conceals any estray found or taken into his or her custody, or effaces or changes any mark or brand thereon, or carries the same beyond the limits of the county where found, or knowingly permits the same to be done, or neglects to notify or give information of estrays to the state board of stock inspection commissioners is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

Source: G.L. § 2567. G.S. § 1306. **R.S. 08:** § 6444. **C.L.** § 3241. **CSA:** C. 160, § 158. **CRS 53:** § 8-4-11. **L. 63:** p. 322, § 5. **C.R.S. 1963:** § 8-4-11. **L. 67:** p. 574, § 2. **L. 91:** Entire section amended, p. 409, § 21, effective June 6. **L. 2002:** Entire section amended, p. 1550, § 324, effective October 1.

Cross references: (1) For provisions relative to effacing brands, see § 35-43-116.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-44-112. Abandoned livestock. (1) The state board of stock inspection commissioners shall have the charge and control of all livestock abandoned or neglected by the owners thereof, and any officer or agent of the state board of stock inspection commissioners may take charge of any such stock or animals found abandoned or neglected.

(2) The state board of stock inspection commissioners, upon taking charge of any such stock or animals, shall forthwith give notice to the owners thereof, if known, and shall care and provide for such stock or animals for a period of ten days from and after the mailing or giving of such notice to the owners of said animals or until the owners take charge of the same within said ten days. The expense of such care and provision shall be a lien upon such stock or animals and shall be paid by the owners to the said state board of stock inspection commissioners before the owners shall be entitled to the possession of the animals.

(3) Upon the owner's failure to pay said expense charges, said stock or animals or such a number thereof as may be necessary shall be sold to the best advantage by the state board of stock inspection commissioners in its discretion at public or private sale, and the proceeds of such sale shall be paid to the owners, after all expenses incurred for the care and provision of said animals and all costs of said sale are deducted. The purchaser at such sale shall be entitled to a bill of sale from the state board of stock inspection commissioners, by virtue of which the purchaser shall acquire a good and valid title; but no sale shall be made previous to the expiration of ten days from and after the date of said notice to the owners.

Source: L. 13: p. 594, § 1. C.L. § 3222. CSA: C. 160, § 139. CRS 53: § 8-4-12. C.R.S. 1963: § 8-4-12. L. 69: p. 124, § 3.

35-44-113. Publication of notice - sale - rules. If the owners of any animals or livestock found abandoned or neglected, as provided for in section 35-44-112, are unknown to the state board of stock inspection commissioners, its officers, or agents, the notice required by section 35-44-112 shall be given by publishing the same as provided for in the case of animals or livestock taken up as estrays. If the owner is not found in ten days after the date of the first publication of the notice, the animals or livestock may be sold. The proceeds, after deducting all expenses of such care, provision, and sale, less a sum determined by the board by rule, for each animal sold, to be retained by the board, shall be credited to the stray fund of the board, subject to the provisions of the law controlling the distribution of the fund. The amount determined by the board retained for each animal sold shall be credited to the brand inspection fund, subject to the provisions of the law controlling the distribution of the brand inspection fund.

Source: L. 13: p. 595, § 2. C.L. § 3223. CSA: C. 160, § 140. CRS 53: § 8-4-13. C.R.S. 1963: § 8-4-13. L. 69: p. 124, § 4. L. 79: Entire section amended, p. 1333, § 3, effective May 18. L. 2004: Entire section amended, p. 649, § 10, effective July 1.

Cross references: For the brand inspection fund, see § 35-41-102.

35-44-114. Disputed ownership - animal deemed not alternative livestock. In any instance where the board determines that an animal is not an alternative livestock, any dispute as to ownership shall be decided by the parks and wildlife commission created in section 33-9-101, C.R.S.

Source: L. 94: Entire section added, p. 1710, § 9, effective July 1. L. 2012: Entire section amended, (HB 12-1317), ch. 248, p. 1238, § 101, effective June 4.

ARTICLE 45

Public Domain Range

35-45-101.	Determination of grazing rights.	35-45-104.	Contents and posting of notice - violations - penalties.
35-45-102.	Mixed range apportioned.	35-45-105.	Reapportionment of range.
35-45-103.	District court has jurisdiction.	35-45-106.	Overstocking range.

35-45-107.	How article construed.		board of district advisers.
35-45-108.	Distribution of receipts.	35-45-110.	Purposes of fund.
35-45-109.	Range improvement fund -		

35-45-101. Determination of grazing rights. To prevent dissension and breach of the peace, the question as to the kind of livestock, whether cattle or sheep, that shall have the preferred or better right to graze upon any particular portion of the public domain within this state shall be determined according to the use made thereof during the last grazing season, whether such use was as cattle or sheep range and whether the same was used as a spring, summer, fall, winter, or other kind of range; but a single instance of grazing or herding certain kind of livestock on any such range over the protest of others in prior use and occupancy thereof, who graze a different kind of livestock, will not confer a better right.

Source: L. 29: p. 443, § 1. CSA: C. 160, § 160. CRS 53: § 8-8-1. C.R.S. 1963: § 8-8-1.

ANNOTATION

Law reviews. For article, "The Public Domain in Colorado", see 13 Rocky Mt. L. Rev. 296 (1941).

This article does not violate constitution of United States or any act of congress; nor does it violate any prohibition of the Colorado constitution. Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932); Joufflos v. Pitchford, 91 Colo. 284, 14 P.2d 1097 (1932); Wyman v. Bell, 96 Colo. 223, 41 P.2d 242 (1935).

Object and purpose. All that was purposed by this article was to provide for judicial determination of what particular portions of government lands should be grazed by herds and what by flocks. Blanc v. People ex rel. Wilcoxson, 94 Colo. 10, 28 P.2d 801 (1933).

Inevitable effect of article is to enhance equality of enjoyment of citizens in the fruit-

ful public domain. Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932).

What may be public domain is not to be determined pursuant to any provision of this article. Blanc v. People ex rel. Wilcoxson, 94 Colo. 10, 28 P.2d 801 (1933).

States may prescribe reasonable regulations applicable to public lands. The United States is vested with the power to control and make all needful rules and regulations with respect to the public domain, and, while such power cannot be restricted by state legislation, states may prescribe reasonable police regulations applicable to public land areas insofar as such regulations do not conflict with congressional enactment. Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932).

35-45-102. Mixed range apportioned. Any range being used as a mixed cattle and sheep range may be apportioned and divided between the different classes of livestock, that is cattle or sheep, grazed thereon by the district court having jurisdiction whenever a controversy or dispute arises upon complaint of any interested party using said range. Upon final hearing, any such range shall be apportioned according to the requirements of the different kinds of livestock grazed or herded thereon and the nature of the different parts of the range to be apportioned and in accordance with the equities and rights of the owners of the different kinds of livestock using such range as a class, regard being paid to the extent of the user theretofore made by each class of livestock growers.

Source: L. 29: p. 444, § 2. CSA: C. 160, § 161. CRS 53: § 8-8-2. C.R.S. 1963: § 8-8-2.

ANNOTATION

Section does not intend to perpetuate mixed ranges. Barrow v. Wilcoxson, 91 Colo. 278, 14 P.2d 1095 (1932).

The classification between cattle and sheep is not arbitrary or unreasonable; the article is uniform in its operation upon all members of the class to which it is made applicable, and so the

owners of such stock are not denied the equal protection of the laws. Consumers' League v. Colo. & S. Ry., 53 Colo. 54, 125 P. 577 (1912); Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932).

Priority of use and occupation will be considered. In determining proportionate rights to

pasture sheep and cattle on the public domain under this law, priority of use and occupation will be considered when the equities are other-

wise equal. Barrow v. Wilcoxson, 91 Colo. 278, 14 P.2d 1095 (1932).

35-45-103. District court has jurisdiction. (1) Whenever a dispute arises as to which respective class of livestock has the better right to graze upon any particular portion of said public domain, the district court of the county wherein such disputed area or some part thereof lies has jurisdiction to determine the matters in an action in equity for an injunction to be brought by any person claiming such better right and against any person violating or threatening to violate any such alleged better right. In all actions brought under the terms of this article, service of process may be made in person or by publication, as provided by rule 4 of the Colorado rules of civil procedure, and the procedure shall be as provided by these rules. The plaintiff may proceed against all unknown defendants the same as in an action in rem and may have said disputed area established either as a cattle or sheep range, as the case may be. In such action, if any defendant disclaims or suffers a decree against him by default, no costs shall be taxed against him. The court may in its discretion grant a temporary restraining order or a temporary injunction as in ordinary cases of suits for injunctions.

(2) When such cause is at issue, the court shall in the first instance refer all questions of fact to three referees. Said referees shall be residents of the state of Colorado and two of them, if possible, shall be persons using or residing in the vicinity of the range concerning which the dispute arises, and one of whom shall be engaged in the cattle business and one person engaged in the sheep business, if discreet persons engaged in said businesses are available. The two, immediately upon taking the oath as referees, shall designate some disinterested person to act as a third referee and, subject to such objection as may be made as provided by law, the court may appoint the third person so designated. In the event of failure to agree upon the third member of said board, the court shall have authority to name the third person.

(3) The referees shall possess the qualifications, exercise the powers and functions, and, except as otherwise provided in this section, be subject to the same objections as provided by law, and the procedure before said referees shall be as provided by the Colorado rules of civil procedure. Within ten days after the report of said referees is filed, any party to the action may file written objections to said report, specifically setting forth the objections thereto and asking that the same be modified or disapproved, as the case may be. The court shall thereupon hear and determine all said objections and either approve or set said report aside. Thereupon the court may require additional findings or may assume jurisdiction and determine all questions at issue and enter a decree accordingly. Unless objections are filed to said report, the same shall be final and a decree shall be entered thereon.

(4) Upon final hearing, either upon the report of said referees or at the conclusion of the hearing by the court, if it appears that plaintiff has the preferred or better right to the use of the public domain in question as against the defendants, the court shall enter a decree finding as definitely as may be the boundaries of such disputed area and may enjoin and restrain the defendants and their servants, agents, and employees, from interfering with such right of the plaintiff and others engaged in the same business and award such other relief as justice and equity may require.

Source: L. 29: p. 444, § 3. CSA: C. 160, § 162. CRS 53: § 8-8-3. C.R.S. 1963: § 8-8-3.

Cross references: For procedure before referees, see C.R.C.P. 53.

ANNOTATION

One who stipulates that temporary injunction may issue against him may not thereafter justify violation of its terms under plea that

court was without jurisdiction to issue it. Wyman v. Bell, 96 Colo. 223, 41 P.2d 242 (1935).

35-45-104. Contents and posting of notice - violations - penalties. Whenever any such portion of such public domain is decreed as a sheep or cattle range or it is decreed that the same is entitled to be used by sheep or cattle owners, as the case may be, the court shall enter an order directing the clerk of the court to give notice of the establishment of such range, which notice shall describe the area or boundaries of the range involved, pursuant to the terms of the decree, and state in substance the findings of the court. Three copies of said notice shall be posted at conspicuous places upon said range by the sheriff of the county in which said range is situated and return made to the clerk of said court, and thereafter it is unlawful for any person, whether acting in his own behalf or as the agent, servant, or employee of another, to graze or herd stock not entitled to be herded or grazed thereon. Each such person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each day that any such person violates this article constitutes a separate offense.

Source: L. 29: p. 446, § 4. CSA: C. 160, § 163. CRS 53: § 8-8-4. C.R.S. 1963: § 8-8-4.

ANNOTATION

One may not be held guilty of contempt for grazing sheep on public land set aside for cattle by court decree where such lands were regularly entered for "stock-raising pur-

poses" by the respondent pursuant to United States laws and regulations subsequent to the entry of the decree. *Blanc v. People ex rel. Wilcoxson*, 94 Colo. 10, 28 P.2d 801 (1933).

35-45-105. Reapportionment of range. (1) If any given area has been adjudged to be subject to use either as a cattle or sheep range, any person in interest may thereafter institute a supplemental proceeding in the same court which rendered the original decree, by filing a supplemental petition setting forth that such person has acquired livestock formerly grazed upon such range or ranch property adjacent to said range from an owner who formerly grazed or herded stock thereon. By reason of the change in ownership of such property the livestock theretofore grazed on said range, or part thereof, will no longer be herded or grazed thereon, and said petition may further show that said range can be apportioned and the original decree can be modified so as to permit the herding or grazing of different kinds of livestock upon a portion of said range without injury to or material interference with the rights and business of a majority of the persons then using said range and grazing the kind of livestock for which said range was originally allotted.

(2) All persons using said range shall be made parties to the proceeding, and if upon the final hearing it appears that said range can be further apportioned or that livestock of a different kind can be grazed or herded on a portion of said range theretofore used by a different kind of livestock without injury to the business of a majority of the persons running livestock under the original decree, then such change may be permitted by supplemental decree; but sufficient range shall be left subject to the terms of the original decree to meet the actual requirements of all persons still running livestock of the kind given the preferred or better right under the original decree. Notice of the provisions of said supplemental decree shall be given as in case of an original decree, and thereafter any person using the portion of range described in said supplemental decree in accordance therewith shall not be subject to fine or imprisonment for violation of any of the terms of this article.

Source: L. 29: p. 447, § 5. CSA: C. 160, § 164. CRS 53: § 8-8-5. C.R.S. 1963: § 8-8-5.

35-45-106. Overstocking range. (1) It is declared the policy of this state to preserve the grasses and vegetation on the public domain and protect the wild game of this state in their natural ranges, and especially on the winter ranges, and to prevent erosion of the soil

and thereby conserve the waters and water supply originating on the public domain ranges of this state, and to prevent the indiscriminate and unregulated overstocking of such ranges which tends to deplete and destroy such vegetation, increase erosion, and diminish the water supply of the streams and springs of the state of Colorado. After May 19, 1929, when any range is adjudged or decreed to be either a cattle or sheep range under the provisions of this article, any person using such range and any person having the right to use water from any stream or source of supply fed from the watersheds in any such range may apply to the court in a supplemental proceeding to establish that any such range is then overstocked or that said range is about to be overstocked with the kind of livestock which may lawfully be herded or grazed thereon and that the vegetation is being permanently destroyed or is about to be permanently destroyed and the water supply upon which any person is dependent is about to be diminished or impaired.

(2) All persons using said range shall be made parties defendant and the court shall proceed to hear testimony and fully investigate the conditions and determine the number of livestock that may be ranged thereon during the seasons when said range is customarily used for grazing purposes, and if it is fully and satisfactorily established by competent evidence that said range is then overstocked or is about to be overstocked, the court may determine the number of livestock that said range or portion of said range is capable of supporting for a period not exceeding two years, enjoining all persons from willfully or intentionally grazing or herding any greater number upon said range. As between the users of any such range adjudged to be an overstocked range, those who have made prior continuous use of said range in accordance with the customary use thereof and those who have privately owned lands accessible to said range upon which their said livestock can be fed or grazed when not on the public range shall have the preferred right up to the allotted number fixed by decree of court, and any decree entered under the provisions of this section shall so provide.

Source: L. 29: p. 448, § 6. **CSA:** C. 160, § 165. **CRS 53:** § 8-8-6. **C.R.S. 1963:** § 8-8-6.

ANNOTATION

Applied in *Joufflos v. Pitchford*, 91 Colo. 284, 14 P.2d 1097 (1932).

35-45-107. How article construed. Nothing in sections 35-45-101 to 35-45-106 shall be construed to prohibit free transit over the public domain as provided by the acts of congress or to confer upon any individual as such an exclusive right to the use or occupancy of any part of the public domain.

Source: L. 29: p. 449, § 7. **CSA:** C. 160, § 166. **CRS 53:** § 8-8-7. **C.R.S. 1963:** § 8-8-7.

ANNOTATION

Occasional grazing during drive does not violate injunction from grazing. Where the owner of sheep is enjoined from grazing them on designated cattle range, he may rightfully drive them across the latter to reach land held by him under lease if he does so in good faith;

occasional grazing while the sheep are being driven or during temporary stops for needed rest will not constitute a violation of the injunction. *Wyman v. Bell*, 96 Colo. 223, 41 P.2d 242 (1935).

35-45-108. Distribution of receipts. (1) All moneys received by the state treasurer as the state's share of the amounts collected by the federal government under the provisions of sections 3 and 15 of the "Taylor Grazing Act", and any act amendatory thereof, and under the provisions of Public Law 136, 82nd congress, approved August 31, 1951, shall be credited to a clearing account.

(2) Moneys received under the provisions of section 3 of the "Taylor Grazing Act" which are derived from each grazing district in the state shall be paid over to the counties in which such grazing districts are located, in the proportion that the acreage of each county lying within a particular grazing district bears to the total acreage of such grazing district, as such acreages are certified by the federal agency administering such provisions.

(3) Moneys received under the provisions of section 15 of the "Taylor Grazing Act" and under the provisions of Public Law 136, 82nd congress, shall be paid over to the several counties of the state from which such moneys were derived, as certified in reports furnished by the federal agency administering said provisions.

(4) All such payments shall be calculated by the state treasurer and shall be made to the respective county treasurers during the month of September of each year.

Source: L. 35: p. 460, § 1. CSA: C. 160, § 166(1). L. 37: p. 615, § 1. L. 45: p. 601, § 1. CRS 53: § 8-8-8. C.R.S. 1963: § 8-8-8. L. 73: p. 1141, § 1.

Cross references: For creation of grazing districts and other provisions of the "Taylor Grazing Act", see 43 U.S.C. § 315 et seq.

35-45-109. Range improvement fund - board of district advisers. (1) All moneys paid to the counties shall be deposited with the county treasurer in a special fund to be known as the range improvement fund of district no. _____. The county treasurer of any county in which a district is located shall be the ex officio district treasurer and custodian of moneys received and shall be liable upon his official bond for all moneys deposited in said range improvement fund. The county treasurer, as ex officio district treasurer, shall pay out such money in said range improvement fund upon the warrant of the chairman or vice-chairman of the district grazing advisory board or a board of district advisers established pursuant to subsection (2) of this section and after consultation with the district manager of the grazing district in which county the moneys were deposited. Said district grazing advisory boards are established pursuant to Public Law 94-579 (43 U.S.C. 1753) or its successor, as may be established by the secretary of the interior pursuant to the "Federal Advisory Committee Act", Public Law 92-463 (86 Stat. 770; Title 5, App.).

(2) (a) In the event that the grazing advisory boards cease to exist, the commissioner of agriculture shall establish and maintain a board of district advisers for each grazing district upon the petition of a simple majority of the livestock lessees and permittees within the jurisdiction of the district. The function of the board of district advisers shall be to determine the use of the range improvement fund in accordance with section 35-45-110.

(b) The number of advisers on each board and the number of years an adviser may serve shall be determined by the commissioner. Each board shall consist of livestock representatives who shall be lessees or permittees in the district under the board's jurisdiction and shall be chosen by the lessees and permittees in the district through an election prescribed by the commissioner. Each board of district advisers shall meet at least once annually.

Source: L. 35: p. 460, § 2. CSA: C. 160, § 166(2). L. 37: p. 616, § 2. L. 45: p. 602, § 2. CRS 53: § 8-8-9. C.R.S. 1963: 8-8-9. L. 77: Entire section R&RE, p. 1613, § 1, effective July 1. L. 86: Entire section R&RE, p. 1076, § 1, effective March 20.

35-45-110. Purposes of fund. The money deposited in the range improvement fund of any county shall be expended within such county for such purposes as may be directed by the board of district advisers of such grazing district or by the board of county commissioners in counties where there is no grazing district, including range improvements and maintenance, predatory animal control, rodent control, poisonous or noxious weed extermination, the purchase or rental of land and water rights, or for the purpose of the general welfare of livestock grazing within the district, or for any similar purpose.

Source: L. 37: p. 617, § 3. CSA: C. 160, § 166(3). L. 45: p. 602, § 3. CRS 53: § 8-8-10. C.R.S. 1963: § 8-8-10.

ARTICLE 46**Fence Law**

Cross references: For establishment and specifications of cattle guards on highways, see § 43-2-211.

35-46-101.	Definitions.	35-46-109.	Taking into custody or release unlawful - penalty.
35-46-102.	Owner may recover for trespass.	35-46-110.	Public highways - railways excluded.
35-46-103.	Board of arbitration.	35-46-111.	Right-of-way fences.
35-46-104.	Finding of board - enforcement.	35-46-112.	Partition fences.
35-46-105.	Grazing on roads and in municipalities - penalty.	35-46-113.	Cost and repair - how recovered.
35-46-106.	Care of stock taken into custody.	35-46-114.	Fence may be removed - when.
35-46-107.	Unlawful to break fence or open gate.	35-46-115.	Electric fences - approval by department of agriculture.
35-46-108.	Lien for trespass and care.		(Repealed)

35-46-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Lawful fence" is a well-constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle, with all gates equally as good as the fence, or any other fence of like efficiency. Railroad right-of-way fences constructed in compliance with the statute in force on the date of construction and maintained in good condition shall be considered legal fences.

(2) "Livestock" includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo, but does not include "alternative livestock" as defined in section 35-41.5-102 (1).

Source: G.L. § 1202. L. 1879: p. 68, § 1. G.S. § 1461. L. 1885: p. 220, § 1. L. 1889: p. 164, § 1. R.S. 08: § 2587. L. 17: p. 342, § 1. C.L. § 3153. CSA: C. 160, § 56. L. 53: pp. 587, 592, §§ 1, 10. CRS 53: §§ 8-13-1, 8-13-10. C.R.S. 1963: §§ 8-13-1, 8-13-10. L. 94: (2) amended, p. 1710, § 10, effective July 1.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 38 Dicta 93 (1961).

This section prescribes character of fence which must be maintained to enable a party to

recover damages from the owner of animals breaking through it. *Fugate v. Smith*, 4 Colo. App. 201, 35 P. 283 (1894).

35-46-102. Owner may recover for trespass. (1) Any person maintaining in good repair a lawful fence, as described in section 35-46-101, may recover damages for trespass and injury to grass, garden or vegetable products, or other crops of such person from the owner of any livestock which break through such fence. No person shall recover damages for such a trespass or injury unless at the time thereof such grass, garden or vegetable products, or crops were protected by such a lawful fence. Even though such land, grass, garden or vegetable products, or other crops were not at such time protected on all sides by a lawful fence, if it is proved by clear and convincing evidence that livestock have broken through a lawful fence on one side of such land to reach such land, grass, products, or crops, recovery and the remedies under this section may be had the same as if such land, grass, products, or crops had been at such time protected on all sides by a lawful fence.

(2) Whenever any person stocks land, not enclosed by a lawful fence, on which such person has a lawful right to pasture or forage livestock, with a greater number of livestock than such land can properly support or water and any of such livestock pasture, forage, or water on the lands of another person, in order to obtain the proper amount of pasture, forage, or water or whenever any person stocks with livestock land on which such person has no

lawful right to pasture or forage livestock and such livestock pasture, forage, or water on such land or on other land on which such person has no right to pasture or forage livestock, he shall be deemed a trespasser and shall be liable in damages and subject to injunction.

(3) All damages sustained on account of the foregoing trespasses may be recovered, together with costs of court and arbitration, and the livestock so trespassing may be taken up by the person damaged and held as security for the payment of such damages and costs. A court of competent jurisdiction in any proper case may issue an injunction to prevent further trespasses. In any action for trespass where the injury complained of has been aggravated and attended by a willful or reckless disregard of the injured person's rights, the board of arbitration, court, or jury may in addition to awarding actual damages include reasonable exemplary damages. Recovery may be had under this section either in a court of law or by arbitration as provided in section 35-46-103.

Source: L. 1885: p. 221, § 3. R.S. 08: § 2589. L. 17: p. 343, § 3. C.L. § 3155. CSA: C. 160, § 58. L. 53: p. 587, § 3. CRS 53: § 8-13-2. C.R.S. 1963: § 8-13-2.

ANNOTATION

Law reviews. For article, "Group Action for Range Control in the Northern Great Plains", see 13 Rocky Mt. L. Rev. 199 (1941). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For article, "Liability for Damages Caused by Escaped Livestock", see 24 Colo. Law. 1581 (1995).

Colorado's fencing laws are inapplicable to federal lands because Colorado law conflicts with the federal Taylor Grazing Act. Under the supremacy clause of the U.S. Constitution, federal law overrides conflicting state law with respect to federal public lands. Management of the federal public lands should not be at the mercy of state legislatures. Federal law as expressed in the Taylor Grazing Act prohibits grazing trespass on federal land with a permit. There is no obligation under the Act for the federal bureau of land management to fence out potential trespassers. *United States v. Shenise*, 43 F. Supp.2d 1190 (D. Colo. 1999).

Maintenance of lawful fence essential to recovery. Under this section, the owner of livestock turning the same at large upon the public highway is not liable for their invasion of the private lands of another who fails to maintain a lawful fence, nor for their trespasses therein, even though he expects that such trespasses shall be committed. *Richards v. Sanderson*, 39 Colo. 270, 89 P. 769 (1907); *Williamson v. Fleming*, 65 Colo. 528, 178 P. 11 (1918); *Schaefer v. Mills*, 72 Colo. 82, 209 P. 643 (1922); *Bolten v. Gates*, 105 Colo. 571, 100 P.2d 145 (1940).

If no fence exists, animal owner not responsible for nonwillful trespass. One who turns his cattle out to graze, unrestrained upon lands where he has a right to so release them, is under no obligation to prevent them entering upon the unenclosed premises of another, and if they do so enter through following their natural instincts, he is not responsible for the damage occasioned thereby, but the absence of a lawful

fence does not justify a willful trespass. *Bolten v. Gates*, 105 Colo. 571, 100 P.2d 145 (1940).

As for necessity of proof of sufficient fence, see *Morris v. Fraker*, 5 Colo. 425 (1880).

Where cattle stray into plaintiff's field night after night. The mere fact that cattle strayed into plaintiff's field night after night did not bring the case within the rule of *Bell v. Gonzales* (35 Colo. 138, 83 P. 639 (1905)), where it was held that this section does not apply in cases where cattle owners deliberately take possession of the lands trespassed upon. *Schecter v. Morgan*, 66 Colo. 35, 178 P. 564 (1919).

Policy of law is to favor stockowners and permit them to range their stock at large; the duty of protecting crops is placed upon the farmer. *Schaefer v. Mills*, 72 Colo. 82, 209 P. 643 (1922).

Willful trespasser knowingly herding or driving his stock upon another's premises, cannot invoke this section in defense of an action for such trespass. *Willard v. Mathesus*, 7 Colo. 76, 1 P. 690 (1883); *Nuckolls v. Gaut*, 12 Colo. 361, 21 P. 41 (1888); *Fugate v. Smith*, 4 Colo. App. 201, 35 P. 283 (1894); *Norton v. Young*, 6 Colo. App. 187, 40 P. 156 (1895); *Sweetman v. Cooper*, 20 Colo. App. 5, 76 P. 925 (1904); *Bell v. Gonzales*, 35 Colo. 138, 83 P. 639 (1905).

Article modifies common-law doctrine which held the owner of trespassing livestock strictly liable for their trespasses on the lands of others. *SaBell's, Inc. v. Flens*, 627 P.2d 750 (Colo. 1981).

In adopting this article, the general assembly modified the common law only to the extent embraced in the article, which may not be enlarged by construction, nor extended beyond its specific terms. *Robinson v. Kerr*, 144 Colo. 48, 355 P.2d 117 (1960).

Article has no application to action for personal injuries. The common law being the

rule of decision in this state, it would seem to follow that the so-called "fence law" has no application to an action for personal injuries inflicted by trespassing animals. *Robinson v. Kerr*, 144 Colo. 48, 355 P.2d 117 (1960); *Harsh v. Cure Feeders, L.L.C.*, 116 P.3d 1286 (Colo. App. 2005).

Article does not bar claim for damages arising from fertilizer spill caused by errant cattle. *Harsh v. Cure Feeders, L.L.C.*, 116 P.3d 1286 (Colo. App. 2005).

Article does not bar action for injuries sustained in automobile accident resulting from negligence in tending cattle and maintaining fences. *Millard v. Smith*, 30 Colo. App. 466, 495 P.2d 234 (1972).

Bailee of livestock may be within scope of section. A bailee may possess sufficient attri-

butes of ownership in a horse to bring that ownership within the scope, intent, and purpose of this section. *SaBell's, Inc. v. Flens*, 42 Colo. App. 421, 599 P.2d 950 (1979), *aff'd*, 627 P.2d 750 (Colo. 1981).

Correct measure of damages where crop is not completely destroyed, and in view of the plaintiff's duty to mitigate damages, is the difference between the yield from the damaged crops and the yield from undamaged crops raised on similar land in the same season and locality. *Bloxson v. San Luis Valley Crop Care, Inc.*, 198 Colo. 113, 596 P.2d 1189 (1979); *Harsh v. Cure Feeders, L.L.C.*, 116 P.3d 1286 (Colo. App. 2005).

35-46-103. Board of arbitration. When any person is trespassed upon or damaged by any livestock or takes into his custody any livestock under section 35-46-102, the claim for damages occasioned by said livestock may be arbitrated by a board of three arbitrators, at the option of the party aggrieved selecting one, the owner of the livestock selecting a second, and the two thus chosen selecting a third. Said arbitrators so chosen shall meet and act as a board of arbitration within five days after a written application is made therefor by either party and written notice given to the other party. It is the duty of the person so taking into custody such livestock to notify in writing within five days after the taking into custody thereof the owner or person in charge of such livestock. If the owner or person in charge of such livestock is not known to the person taking the livestock into custody or cannot be found after diligent search and inquiry, then the person so taking custody of such livestock shall publish within one week a notice containing a full description of such livestock, including all marks and brands as nearly as can be ascertained, in a paper published nearest the place where the alleged damage occurred. In the event the owner of such livestock cannot be found within ten days after the date of the publication of such notice, the livestock shall be an estray and the state board of stock inspection commissioners shall be entitled to said livestock subject to the lien for damage sustained and cost and care and feeding of the same by the person taking such livestock into custody. Such person shall deliver the same to the owner thereof whenever such owner furnishes the person so damaged by such livestock a bond in double the amount of the damage claimed, executed by two responsible persons, said bond to be satisfactory to such damaged party or approved by a county judge or district judge of such county, conditioned upon the payment to the person taking custody of such livestock all damages and costs, if any such damages or costs are awarded.

Source: L. 17: p. 345, § 6. C.L. § 3158. CSA: C. 160, § 61. L. 53: p. 589, § 6. CRS 53: § 8-13-3. C.R.S. 1963: § 8-13-3. L. 64: p. 205, § 6.

Cross references: For disposition of estrays, see article 44 of this title.

ANNOTATION

Applied in *Thompson v. Davis*, 117 Colo. 82, 184 P.2d 133 (1947).

35-46-104. Finding of board - enforcement. The finding of said board of arbitration, when reduced to writing and signed by a majority of the members thereof, constitutes an obligation on the part of the person against whom the finding is made to pay to the aggrieved party the sum set forth in the finding of said board of arbitration. In the event the person against whom the finding of such board of arbitration is made fails, neglects, or

refuses to pay to the aggrieved party the sum set forth in the finding of said board of arbitration, within thirty days from the date of the written findings of such board, then the finding of said board of arbitration may be filed in any court of record within the jurisdiction where the damage was sustained. The finding of such board so filed shall be deemed for the purposes of sections 35-46-101 to 35-46-110 a judgment of said court and execution may issue thereon as by law provided in judgments of said court. The costs agreed upon to be incurred in said arbitration shall follow the findings as in suits at court. If the owner of any livestock makes a tender in money of all damages to the person claiming damages, the person claiming damages shall pay all costs and expenses thereafter accruing unless he is awarded a larger amount than was tendered by the owner of such livestock.

Source: L. 17: p. 346, § 7. C.L. § 3159. CSA: C. 160, § 62. L. 53: p. 590, § 7. CRS 53: § 8-13-4. C.R.S. 1963: § 8-13-4. L. 64: p. 205, § 7.

35-46-105. Grazing on roads and in municipalities - penalty. (1) It is unlawful for the owner or any person in charge of any livestock knowingly to cause or permit such livestock to graze or run at large in any incorporated or unincorporated municipality, lane, road, or public highway if the same is separated from the land or range of such owner or person in charge by a fence or other barrier sufficient to keep livestock from reaching such municipality, lane, road, or public highway. In case any such livestock so running at large is killed or injured by any vehicle, the owner, driver, or person in charge of such vehicle shall not be liable therefor if the killing or injury is not malicious, willful, or wanton. Nothing in this section shall be applicable to livestock having a person in charge when such livestock are being driven on or through such municipalities, lanes, roads, or public highways or when range livestock being ranged on their usual range or allotments have broken through maintained drift fences or cattle guards and are on the premises unknown to the owners.

(2) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars for each offense. It is the duty of every Colorado state patrolman, sheriff, or other peace officer to prefer charges against any person violating this section and take custody of such livestock and place them on feed and water. Such livestock may be placed by such officer in the custody of a responsible person who shall care for the same pending disposition of any court action under this section. The livestock may be held in case of conviction of the owner or other person in charge for the payment of any reasonable costs of handling, care, and feed and of court and for the payment of all fines which may be levied against said owner or other person in charge. In the event such costs and fine are not paid within ten days after the entry of judgment, such court, after reasonable notice to such owner and any known persons in interest as determined by the court, may order sufficient numbers of such livestock sold to pay such costs and fine.

(3) In cases where such livestock are horses, mules, or burros of inferior quality and of the apparent value of less than thirty-five dollars per head and the owner or any other person in interest cannot be found after reasonable search and inquiry, the state board of stock inspection commissioners, or its duly authorized representative, after posting of notice at a conspicuous place at the courthouse of the county where such livestock are found for a period of ten days, may sell such livestock at private or public sale as stated in said notice, and the proceeds of such sale remaining after the payment of all reasonable costs shall be held for the owner or other person in interest when found as is provided by law for estray funds.

Source: L. 17: p. 347, § 8. L. 21: p. 567, § 1. C.L. § 3160. CSA: C. 160, § 63. L. 39: p. 554, § 1. L. 47: p. 850, § 1. L. 53: p. 591, § 8. CRS 53: § 8-13-5. C.R.S. 1963: § 8-13-5.

Cross references: For disposition of proceeds from sale of estrays, see § 35-44-106; for laws pertaining to hogs running at large, see § 35-43-125; for laws pertaining to horses and mules running at large, see article 47 of this title; for powers of municipalities to restrain and impound estrays, see § 31-15-401 (1)(m).

35-46-106. Care of stock taken into custody. It is the duty of any person who takes any animals into custody under the provisions of this article to feed and care for such animals in a reasonable, careful, and prudent manner and keep the same in as good order and condition as when so taken into custody by the said party, and he shall be liable for any damage occasioned by his failure to do so. For such feed and care such party shall be entitled to recover from the owner of such animals a reasonable compensation, to be recovered as provided for the recovery of damages sustained.

Source: L. 17: p. 347, § 9. C.L. § 3161. CSA: C. 160, § 64. CRS 53: § 8-13-6. C.R.S. 1963: § 8-13-6.

Cross references: For failure to provide an animal with proper food, drink, or protection from the weather, see § 18-9-202.

35-46-107. Unlawful to break fence or open gate. It is unlawful for any person to willfully break down or cause to be broken down any fence or gate or to leave open any gate in such fence. This section shall not apply to the owner or occupant unless such owner or occupant causes such fence or gate to be broken down or left open with malicious intent.

Source: L. 17: p. 348, § 10. C.L. § 3162. CSA: C. 160, § 65. CRS 53: § 8-13-7. C.R.S. 1963: § 8-13-7.

Cross references: For criminal mischief, see § 18-4-501.

35-46-108. Lien for trespass and care. Any party taking into custody animals under the provisions of this article shall have a lien upon such animals for the damages occasioned by the trespass of such animals and for a reasonable compensation for their feed and care while in the possession of the party, if damages are recovered.

Source: L. 17: p. 348, § 11. C.L. § 3163. CSA: C. 160, § 66. CRS 53: § 8-13-8. C.R.S. 1963: § 8-13-8.

35-46-109. Taking into custody or release unlawful - penalty. It is unlawful for any person to take into his custody any livestock without complying with the provisions of sections 35-46-102 to 35-46-105 unless such taking be done in good faith. It is unlawful for any person, forcibly or by trickery, fraud, or deceit, or without the knowledge and consent of the person having possession of any livestock taken under such provisions, to remove the same from the possession of such person. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

Source: L. 17: p. 348, § 12. C.L. § 3164. CSA: C. 160, § 67. L. 53: p. 592, § 9. CRS 53: § 8-13-9. L. 63: p. 322, § 6. C.R.S. 1963: § 8-13-9.

35-46-110. Public highways - railways excluded. "Public highways", as used in this article, shall not be construed to include railways of any kind or railway rights-of-way of any kind.

Source: L. 17: p. 349, § 15. C.L. § 3167. CSA: C. 160, § 70. CRS 53: § 8-13-11. C.R.S. 1963: § 8-13-11.

35-46-111. Right-of-way fences. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and subsection (4) of this section, it is the duty of the department of transportation to maintain right-of-way fences constructed as of June 1, 1994, by the department at or near the boundary of the department's highway property in agriculturally zoned areas along and adjacent to all federal aid highways where such highways are maintained by the department. The department shall make repairs to such right-of-way fences when necessary only upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(b) If the department removes a right-of-way fence in an agriculturally zoned area during a construction project, the department shall replace and maintain said fence unless the landowner and the department agree that said fence shall not be replaced.

(2) In nonagriculturally zoned areas, the department may erect a right-of-way fence where the highway has been declared a freeway pursuant to section 43-3-101, C.R.S., or in areas that the landowner and the department agree that said fence be erected. If the department erects a right-of-way fence or has previously erected a right-of-way fence where the highway has been declared a freeway, the department shall maintain and repair said fence when necessary upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(3) Upon actual notice, the department shall maintain right-of-way fences constructed by the department, where highways are maintained by the department, at or near the boundary of the department's highway property adjacent to properties owned by municipalities unless otherwise agreed to in writing by the department and the municipality.

(4) If, in both agriculturally and nonagriculturally zoned areas, the landowner adjacent to an existing right-of-way fence and the department agree that said fence shall be removed, the right-of-way fence shall be removed by the department at its expense. If the landowner removes or causes the removal of the right-of-way fence without agreement by the department, the department shall not be required to reimburse the landowner for such removal, and the landowner shall be liable for any and all damages caused by the unauthorized removal of the fence.

(5) If a right-of-way fence is either removed or not replaced pursuant to subsection (1) or (4) of this section and the landowner who agreed that the fence be removed or not replaced or any subsequent landowner of property adjacent to the right-of-way later desires to erect a right-of-way fence, said fence may be erected by the landowner at the landowner's expense, but only upon prior agreement by the department. Such right-of-way fence shall be constructed in accordance with the standards applicable to the department at the time such fence is erected, and the department is required to make repairs to such right-of-way fence upon actual notice to the department. Liability for any damages caused by failure to adequately construct the right-of-way fence shall be borne by the landowner at the time the damages are incurred.

(6) All agreements required pursuant to subsections (1) to (5) of this section shall be in writing, be recorded by the department in the office of the county clerk and recorder of each county where the real property adjacent to the right-of-way is located, and be binding upon and notice to all persons or classes of persons claiming any interest in said property.

(7) If a landowner and the department agree to either remove or not replace a right-of-way fence pursuant to subsections (1) to (5) of this section and the landowner at the time of the agreement or any subsequent landowner does not maintain livestock, as defined in section 35-46-101 (2), on the land adjacent to a highway right-of-way, any livestock that enters the highway right-of-way through that land shall not be a dangerous condition pursuant to section 24-10-106 (1) (d), C.R.S. Neither the landowner nor the department shall be liable for any damages caused by such livestock because of the absence of such right-of-way fence.

(8) If a person herds livestock along a highway adjacent to property from which a fence has been removed pursuant to this section and any of the livestock strays onto that property, the landowner may not recover damages for trespass and injury to grass, garden or vegetable products, or other crops from the owner of the livestock unless the landowner can

prove the person herding the livestock allowed the livestock to enter the property without making an effort to remove the livestock. Nothing in this section is intended to change the status of open range law and statutes relating to fences in Colorado.

(9) Notwithstanding any other provision of this section, the department may erect and maintain a right-of-way fence in any area at the department's expense, in its sole discretion, but the department has no duty to erect and maintain any fence at its expense.

Source: L. 35: p. 488, § 1. CSA: C. 160, § 71. CRS 53: § 8-13-12. C.R.S. 1963: § 8-13-12. L. 89: Entire section amended, p. 1408, § 1, effective July 1, 1990. L. 91: Entire section amended, p. 1074, § 58, effective July 1. L. 94: Entire section amended, p. 1113, § 1, effective May 19.

ANNOTATION

Law reviews. For article, "Liability for Damages Caused by Escaped Livestock", see 24 Colo. Law. 1581 (1995).

Purpose of this section is to protect motorists on the highway from the danger of trespassing livestock wandering into their path and causing an accident. *Biella v. State Dept. of Hwys.*, 652 P.2d 1100 (Colo. App. 1982), *aff'd*, 672 P.2d 529 (Colo. 1983) (dissenting opinion).

Statutory purpose is to keep highways and motorists safe. Therefore, state may be liable for injuries to motorcyclist who hit calf which

was able to get onto highway because of gap in fence along the highway that had not been repaired by the department of highways. *Moldovan v. State*, 829 P.2d 481 (Colo. App. 1991), *aff'd*, 842 P.2d 230 (Colo. 1992) (decided under law in effect prior to 1989 amendment).

However, this section when read with §§ 24-10-103 and 24-10-106, requires that the state's negligence be proved under general principles of negligence and not on the theory of negligence *per se*. *Moldovan v. State*, 842 P.2d 230 (Colo. 1992).

35-46-112. Partition fences. Where the agriculture or grazing lands of two or more persons adjoin, whether or not such lands are farmed or grazed, it is the duty of the owner of each tract to build one-half of the line fence, such fence to be a lawful fence as described in section 35-46-101. When the owner or tenant of any agricultural or grazing lands owns a previously erected lawful fence upon any line between such land and the agricultural or grazing lands of any other person, and such other person or anyone holding under such person, occupies the adjoining land, it is the duty of such owner to pay the person owning such fence one-half of its cash value.

Source: L. 1885: p. 221, § 4. R.S. 08: § 2590. L. 17: p. 344, § 4. C.L. § 3156. CSA: C. 160, § 59. L. 53: p. 588, § 4. CRS 53: § 8-13-13. C.R.S. 1963: § 8-13-13.

ANNOTATION

Fence erected 10 feet inside line cannot be regarded as built in compliance with this section. *Maudlin v. Hanscombe*, 12 Colo. 204, 20 P. 619 (1888).

Party who builds fence cannot charge neighbor for contribution. Where both adjoining pasture premises are in occupancy and no partition fence exists, no provision of this sec-

tion gives to one of the parties, who may elect to build the entire line fence, any right to recover involuntary contributions from his neighbor who has deferred the performance of his inchoate statutory duty: Section 35-46-113 alone provides machinery for the imposition of a statutory liability upon a noncooperating party. *Mosher v. Schumm*, 114 Colo. 441, 166 P.2d 559 (1946).

35-46-113. Cost and repair - how recovered. Partition fences between agricultural and grazing land shall be erected and also kept in repair at the joint cost of the owners of the respective adjoining tracts, except as otherwise agreed by such owners. If after thirty days written notice, served personally or by registered mail by either the owner or tenant of one tract upon the owner or tenant of the other tract, such other owner neglects or refuses

to erect or repair one-half of the partition fence, the person giving notice may proceed to erect or repair the entire partition fence and collect by a civil action at law one-half the entire cost thereof from the other owner. Any judgment obtained against the owner of any land for the value of his share of any such partition fence or the repair thereof shall be a lien upon such owner's land to which such fence is appurtenant, and a special execution may issue and be levied upon the land to which such fence is appurtenant as in the manner now prescribed for the levying of an execution under the foreclosure of a mortgage upon real property. Such land may be sold under sheriff's sale for the purpose of satisfying such special execution in the same manner as is now provided for the foreclosure of mortgages on real property.

Source: L. 1885: p. 221, § 5. R.S. 08: § 2591. L. 17: p. 344, § 5. C.L. § 3157. CSA: C. 160, § 60. L. 53: p. 589, § 5. CRS 53: § 8-13-14. C.R.S. 1963: § 8-13-14.

Cross references: For foreclosure of mortgages on real property, see articles 37 to 41 of title 38 and C.R.C.P. 120.

ANNOTATION

Either of owners of adjoining property may initiate building of fence if one or the other desires, and the procedure for the sharing of the cost is provided for by this section. Kelly v. Mullin, 159 Colo. 573, 413 P.2d 186 (1966).

Section alone expressly creates duty of joint maintenance of partition fences and confers the only statutory right to recover contribution therefor. Mosher v. Schumm, 114 Colo. 441, 166 P.2d 559 (1946).

Requires service of notice. An adjoining owner's share of the cost of a partition fence

cannot be recovered from him where there is no proof of service of the required notice on him. Mosher v. Schumm, 114 Colo. 441, 166 P.2d 559 (1946).

Purpose of notice provision is to give the inactive party 30 days in which to elect whether he shall erect his share of the fence or contribute to the movant for its construction; also, the service of notice formally fixes the time of demand and of default if such follows. Mosher v. Schumm, 114 Colo. 441, 166 P.2d 559 (1946).

35-46-114. Fence may be removed - when. When any person unwittingly, or by mistake, erects a fence upon the land of another and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove such fence at any time within one year after giving or receiving notice that the line has been run; but when the fence to be removed forms any part of a fence enclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop can, with reasonable diligence, be gathered and secured.

Source: L. 1885: p. 222, § 7. R.S. 08: § 2593. C.L. § 3169. CSA: C. 160, § 73. CRS 53: § 8-13-15. C.R.S. 1963: § 8-13-15.

ANNOTATION

This section provides for right of access by one land owner to remove fence. Kelly v. Mullin, 159 Colo. 573, 413 P.2d 186 (1966).

35-46-115. Electric fences - approval by department of agriculture. (Repealed)

Source: L. 71: p. 170, § 1. C.R.S. 1963: § 8-13-16. L. 77: Entire section repealed, p. 293, § 13, effective May 26.

ARTICLE 47**Livestock - Running at Large**

Cross references: For estrays, see article 44 of this title.

35-47-101.	Horses and mules running at large.	35-47-103.	recovery. Penalty.
35-47-102.	Duty of custodian - fees -		

35-47-101. Horses and mules running at large. It is unlawful for any owner, or the agent, lessee, bailee, or employee of such owner of any horses or mules, to knowingly permit any of said animals to run at large, within a distance of ten miles from any city having one hundred thousand or more population; within a distance of five miles of any city having between five thousand and thirty thousand population; within a distance of one mile of all other cities or towns; and within a distance of one mile from the business area of any unincorporated town or village; but nothing in this article shall prevent anyone from driving any of said animals to market or from pasture to pasture or prevent the use of horses or mules for riding, driving, or drawing animal-propelled vehicles or machinery. This article shall not affect any common used solely for grazing purposes which has been established by land grant and ratified by treaty.

Source: L. 57: p. 142, § 1. CRS 53: § 8-19-1. C.R.S. 1963: § 8-18-1.

Cross references: For penalty for grazing on roads and in municipalities, see § 35-46-105; for powers of municipalities to restrain and impound estrays, see § 31-15-401 (1)(m).

35-47-102. Duty of custodian - fees - recovery. Where said animals are in violation of section 35-47-101, it is the duty of every sheriff or other peace officer of the county, on complaint of any person, to take custody of such animals and place them on feed and water. He may appoint a custodian for such purpose and pay such custodian a fee of four dollars per day to be assessed as costs; and the owner or agent may give the sheriff or other officer a redelivery bond in sufficient sum for repossession of his stock, pending a court action. In cases where the owner or agent is known and has been convicted in court, the sheriff or other officer may dispose of such animals or sufficient numbers of them to pay for the fine and reasonable costs of feeding and other expenses in connection therewith, after giving ten days notice by posting three notices in public and conspicuous places. In cases where the owner of such animals is unknown, the animals shall be taken up and disposed of by the state board of stock inspection commissioners, or one of its duly authorized representatives, the same as other estrays as provided for by law.

Source: L. 57: p. 142, § 2. CRS 53: § 8-19-2. C.R.S. 1963: § 8-18-2.

35-47-103. Penalty. Any person who knowingly permits any of said animals to run at large is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

Source: L. 57: p. 143, § 3. CRS 53: § 8-19-3. C.R.S. 1963: § 8-18-3.

ARTICLE 48**Bulls, Rams, and Boars**

35-48-101.	Lien one year.	35-48-103.	Inferior bulls or rams.
35-48-102.	Bona fide purchasers protected.	35-48-104.	Castration of inferior animals.

35-48-101. Lien one year. The keepers of bulls, rams, and boars, in this state, have liens upon the get of such animals for the space of one year from the birth of same, for payment of service of such bull, ram, or boar.

Source: L. 1879: p. 190, § 1. G.S. § 3193. R.S. 08: § 6445. C.L. § 3269. CSA: C. 160, § 199. CRS 53: § 8-9-8. C.R.S. 1963: § 8-9-8.

35-48-102. Bona fide purchasers protected. Section 35-48-101 shall not apply to a bona fide purchaser without notice of the lien.

Source: L. 1879: p. 190, § 2. G.S. § 3194. R.S. 08: § 6446. C.L. § 3270. CSA: C. 160, § 200. CRS 53: § 8-9-9. C.R.S. 1963: § 8-9-9.

35-48-103. Inferior bulls or rams. (1) It is unlawful for any person, firm, or corporation to permit any inferior bull over the age of one year or any inferior ram over the age of two months to run at large in this state. Any bull shall be considered an inferior bull that is not registered or eligible for registration as a purebred animal.

(2) Any person permitting cows of which he is the owner or agent of the owner to run at large upon the public ranges of this state shall furnish during breeding season at least one registered purebred bull of one of the recognized beef breeds, not less than eighteen months of age, for every twenty-five head of cows or fraction thereof over ten head so permitted to run at large in this state. No owner or agent of the owner shall permit any jersey, holstein, guernsey, ayrshire, or other bull not registered or eligible for registration as one of the recognized beef breeds to run at large in this state under any pretense whatever, and should any such bull break through any enclosure surrounded by a lawful fence, the owner of such animal shall be liable for all damages occasioned by such trespass.

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each offense.

Source: L. 21: p. 756, § 1. C.L. § 3258. L. 31: p. 760, § 1. CSA: C. 160, § 188. CRS 53: § 8-9-10. C.R.S. 1963, § 8-9-10. L. 67: p. 314, § 1.

35-48-104. Castration of inferior animals. It is lawful for any stock grower to castrate or cause to be castrated any inferior animal found running at large; but, if any person castrates any animal belonging to another, without permission, and on proper evidence before any competent court it is proved to the satisfaction of said court that such animal was not within the prohibition of section 35-48-103, said person so castrating such animal shall be liable for damages in three times the value of the animal so castrated and costs of suit.

Source: L. 1872: p. 180, § 5. L. 1874: p. 250, § 1. G.L. § 2568. L. 1883: p. 279, § 1. G.S. § 1307. L. 1899: p. 250, § 1. R.S. 08: § 6436. C.L. § 3240. CSA: C. 160, § 157. CRS 53: § 8-9-11. C.R.S. 1963: § 8-9-11.

ARTICLE 49

Livestock Water Tanks

35-49-101.	Short title.	35-49-107.	Construction requirements.
35-49-102.	Legislative declaration.	35-49-108.	State engineer to inspect dam.
35-49-103.	Definitions.	35-49-109.	Priority determined - how.
35-49-104.	Statutes inapplicable.	35-49-110.	Standard plans - publication.
35-49-105.	Not used for irrigation.	35-49-111.	When conduits not required.
35-49-106.	Plans submitted to state engineer.	35-49-112.	Fees deposited in general fund.

35-49-113.	Assignment of priority number. (Repealed)	35-49-115.	Penalty.
35-49-114.	Approval required for reservoir. (Repealed)	35-49-116.	Appropriation - transfer of funds.

35-49-101. Short title. This article shall be known and may be cited as the “Livestock Water Tank Act of Colorado”.

Source: L. 41: p. 525, § 1. CSA: C. 160, § 226. CRS 53: § 8-17-1. C.R.S. 1963: § 8-17-1.

35-49-102. Legislative declaration. It is the policy of the state of Colorado to encourage and improve range conditions for livestock within its borders through the construction of watering tanks, to provide a system of priorities of right of use thereof, and to protect adjudicated water rights and the public interest by providing an official record and reasonable public supervision of such watering tanks.

Source: L. 41: p. 525, § 2. CSA: C. 160, § 227. CRS 53: § 8-17-2. C.R.S. 1963: § 8-17-2.

35-49-103. Definitions. As used in this article, unless the context otherwise requires:
(1) “Livestock water tanks” includes all reservoirs created by dams constructed after April 17, 1941, on watercourses, the channels of which are normally dry as determined by the state engineer, having a capacity not exceeding ten acre feet and a vertical height not exceeding fifteen feet from the bottom of the channel to the bottom of the spillway to be used for stock watering purposes.

Source: L. 41: p. 525, § 4. CSA: C. 160, § 229. CRS 53: § 8-17-4. C.R.S. 1963: § 8-17-4.

35-49-104. Statutes inapplicable. The provisions of sections 37-87-101 to 37-87-108 and 37-87-114 to 37-87-115, C.R.S., shall not apply to livestock water tanks of the character defined in section 35-49-103.

Source: L. 41: p. 525, § 3. CSA: C. 160, § 228. CRS 53: § 8-17-3. C.R.S. 1963: § 8-17-3. L. 86: Entire section amended, p. 1092, § 3, effective May 16.

35-49-105. Not used for irrigation. No livestock water tanks constructed under the provisions of this article shall be used for irrigation purposes, and nothing contained in this article shall be construed as conferring upon the owner of any such livestock water tank a priority of use superior to any vested water right or to an adjudicated appropriation of water pursuant to state laws. Unless built upon an intermittent or perennial main stream, dams creating such livestock water tanks shall be deemed to have a rebuttable presumption that there is no injury to adjudicated water rights when built pursuant to the specifications set forth in section 35-49-103. If used solely for watering of livestock in areas known to be deficient in windmill water, having a pumping capacity of less than five gallons per minute, dams of greater capacity than those designated in section 35-49-103 may be constructed on any ephemeral stream, but in such event, the state engineer may require the construction of drainage facilities to reduce the water impounded in the reservoir to the capacity prescribed in section 35-49-103, within a thirty-six hour period.

Source: L. 41: p. 525, § 5. CSA: C. 160, § 230. CRS 53: § 8-17-5. C.R.S. 1963: § 8-17-5. L. 67: p. 180, § 1.

35-49-106. Plans submitted to state engineer. Anyone proposing to construct a dam for the creation of a livestock water tank, as described in section 35-49-103, shall submit

to the state engineer for approval an application on a form provided by the state engineer showing the general location of such proposed dam with reference to section, township, and range, location and dimensions of spillway, and the number, location, and size of dams already constructed within the watersheds of the dry channel on which such dam is proposed to be built. Nothing contained in this section shall be construed to specify plans and specifications of such technical detail or nature as to require preparation by an engineer or construction of such stock water tanks under the supervision of an engineer; it being the intent and purpose of the provisions of this section that the state engineer shall be apprised by the completed application of pertinent information sufficient to enable the state engineer to ascertain the general location of the water tank, its operation in relation to tanks already constructed, its relative priority rights, its effect on existing appropriations of water, its capacity, its dam dimensions, the necessary and reasonable factors of safety, and its compliance with the provisions of this article.

Source: L. 41: p. 526, § 6. **CSA:** C. 160, § 231. **CRS 53:** § 8-17-6. **C.R.S. 1963:** § 8-17-6. **L. 92:** Entire section amended, p. 2304, § 1, effective June 3.

35-49-107. Construction requirements. (1) The state engineer shall examine each application submitted and, if the state engineer approves the same, shall return one copy of each such application with the approval of the state engineer thereon to the person submitting the same and file the other copy at the office of the state engineer. If the state engineer disapproves such application, or any part thereof, the same shall be returned to the applicant for correction and revision. In cases where the state engineer deems it necessary, before approval thereof, the state engineer may inspect the proposed water tank site and make such independent investigation as necessary. Whether the state engineer approves such application, or disapproves it and returns the same for correction and revision, the state engineer shall act within fifteen days after the application is submitted. Until the approval by the state engineer of an application has been obtained, the construction of such dam is prohibited.

(2) The provisions of this section and section 35-49-112 specifying approval by the state engineer and providing a fee therefor shall not apply to dams having a vertical height not exceeding five feet from the bottom of the channel to the bottom of the spillway and which impound not more than two acre feet of water.

(3) Anyone proposing to construct a dam for the creation of a livestock water tank, as described in section 35-49-103, shall comply with section 35-49-106. Every owner of a proposed reservoir for stock watering purposes who desires to obtain a priority number for such structure shall comply fully with all pertinent provisions of this article.

Source: L. 41: p. 526, § 7. **CSA:** C. 160, § 232. **CRS 53:** § 8-17-7. **C.R.S. 1963:** § 8-17-7. **L. 92:** Entire section amended, p. 2305, § 2, effective June 3.

35-49-108. State engineer to inspect dam. When such a dam is completed the state engineer shall be notified of such completion and, thereafter, may inspect said stock water tank. If the state engineer finds that the construction fails to conform with the application approved by the state engineer, it then becomes the duty of the owner of such dam to make such change and corrections therein as the state engineer has determined to be necessary to correct such failure, and when the same have been made, the state engineer shall provide in writing approval of such structure. Approval shall be granted by the state engineer upon reasonable compliance with the approved application and standard specifications. A livestock water tank shall not be disapproved because of failure to observe technical engineering details in construction.

Source: L. 41: p. 527, § 8. **CSA:** C. 160, § 233. **CRS 53:** § 8-17-8. **C.R.S. 1963:** § 8-17-8. **L. 92:** Entire section amended, p. 2305, § 3, effective June 3.

35-49-109. Priority determined - how. The state engineer's certificate of approval of a livestock water tank on each normally dry stream and its tributaries shall be chronolog-

ically numbered in the order of approval and in concert with any erosion control dams approved pursuant to section 37-87-122, C.R.S. Priority of right as between such tanks located on or within the watershed of each such dry stream shall be determined by such numbers seriatim, number one being first in such right.

Source: L. 41: p. 527, § 9. CSA: C. 160, § 234. CRS 53: § 8-17-9. C.R.S. 1963: § 8-17-9. L. 92: Entire section amended, p. 2306, § 4, effective June 3.

35-49-110. Standard plans - publication. The state engineer shall prepare and keep in file at the office of the state engineer standard plans, drawings, and specifications for livestock water tanks, which shall be subject to revision by the state engineer and shall in general be used as a guide by persons proposing to construct such tanks. Publication of these plans shall be subject to the approval and control of the executive director of the department of natural resources.

Source: L. 41: p. 528, § 10. CSA: C. 160, § 235. CRS 53: § 8-17-10. C.R.S. 1963: § 8-17-10. L. 64: p. 127, § 34. L. 92: Entire section amended, p. 2306, § 5, effective June 3.

35-49-111. When conduits not required. Where, in the judgment of the state engineer, tanks upon any stream and its tributaries do not require conduits for purposes of safety or the protection of prior livestock water tank rights, it is lawful for the state engineer to approve an application not calling for conduits. Nothing in this section shall abrogate the right of any owner of a vested water right or appropriation of water to require such conduits in any case where necessary to protect such senior right.

Source: L. 41: p. 528, § 11. CSA: C. 160, § 236. CRS 53: § 8-17-11. C.R.S. 1963: § 8-17-11. L. 92: Entire section amended, p. 2306, § 6, effective June 3.

35-49-112. Fees deposited in general fund. Each application for a livestock water tank submitted to the state engineer under the provisions of this article shall be accompanied by a fee of fifteen dollars. This fee shall be deposited by the state engineer with the state treasurer who shall credit all such fees to the general fund of the state.

Source: L. 41: p. 528, § 12. CSA: C. 160, § 237. L. 51: p. 789, § 1. CRS 53: § 8-17-12. L. 61: p. 185, § 1. C.R.S. 1963: § 8-17-12. L. 90: Entire section amended, p. 1616, § 1, effective July 1. L. 92: Entire section amended, p. 2306, § 7, effective June 3.

35-49-113. Assignment of priority number. (Repealed)

Source: L. 41: p. 528, § 13. CSA: C. 160, § 238. CRS 53: § 8-17-13. C.R.S. 1963: § 8-17-13. L. 92: Entire section repealed, p. 2306, § 8, effective June 3.

35-49-114. Approval required for reservoir. (Repealed)

Source: L. 41: p. 529, § 14. CSA: C. 160, § 239. CRS 53: § 8-17-14. C.R.S. 1963: § 8-17-14. L. 92: Entire section repealed, p. 2307, § 9, effective June 3.

35-49-115. Penalty. The owner of any dam or reservoir failing to comply with the provisions of this article shall be subject to a penalty of not more than twenty-five dollars nor less than five dollars, to be recovered and disposed of as are fines for violations of section 37-87-114, C.R.S.

Source: L. 41: p. 529, § 15. CSA: C. 160, § 240. CRS 53: § 8-17-15. C.R.S. 1963: § 8-17-15.

35-49-116. Appropriation - transfer of funds. The general assembly shall annually appropriate from the general fund moneys for the administration of this article.

Source: L. 61: p. 185, § 2. CRS 53: § 8-17-16. C.R.S. 1963: § 8-17-16.

ARTICLE 50

Livestock Health Act

Editor's note: This article was numbered as article 5 of chapter 8, C.R.S. 1963. The provisions of this article were repealed and reenacted in 2005, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2005, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

35-50-101.	Short title.	35-50-111.	Quarantine.
35-50-102.	Legislative declaration.	35-50-112.	Importation of livestock - pet animal health certificates.
35-50-103.	Definitions.	35-50-113.	Condemnation of livestock.
35-50-104.	State veterinarian and authorized representatives.	35-50-114.	Indemnification of livestock owners.
35-50-105.	Powers and duties of the commissioner.	35-50-115.	Cervidae disease revolving fund - creation.
35-50-106.	Veterinary vaccine and service fund - expenditures - rules.	35-50-116.	Unlawful acts.
35-50-107.	Disease detection and prevention.	35-50-117.	Enforcement.
35-50-108.	Mandatory reporting.	35-50-118.	Civil penalties.
35-50-109.	Inspection and testing.	35-50-119.	Criminal penalties.
35-50-110.	State livestock disease diagnostic laboratories.	35-50-120.	Information sharing and analysis.
		35-50-121.	Rights of secured parties.
		35-50-122.	Savings clause.

35-50-101. Short title. This article shall be known and may be cited as the "Livestock Health Act".

Source: L. 2005: Entire article R&RE, p. 447, § 1, effective December 1.

35-50-102. Legislative declaration. The general assembly finds and declares that the diagnosis, control, and eradication of livestock diseases are matters of statewide concern. Livestock disease control is essential to the livestock industry and the health of the economy of the state of Colorado. The provisions of this article are enacted to protect the public health, safety, and welfare.

Source: L. 2005: Entire article R&RE, p. 447, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-135 as it existed prior to 2005, and the former § 35-50-102 was relocated to § 35-50-112.

35-50-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Accredited veterinarian" means a veterinarian approved by the United States department of agriculture in accordance with 9 CFR 161, as may be amended from time to time.

- (2) "Commission" means the state agricultural commission.

- (3) "Commissioner" means the commissioner of agriculture.

- (4) "Department" means the department of agriculture.

(5) "Hold" means a temporary order issued by the state veterinarian when an infectious or contagious disease is suspected in livestock to isolate any specific livestock, premises, county, district, or section of the state; restrict the movement of livestock; and specify sanitary measures, pending completion of testing.

(6) "Infectious or contagious disease" means a reportable or emerging disease of livestock that poses a significant risk to the livestock industry of the state resulting from infectious agents, such as viruses, rickettsia, bacteria, fungi, protozoa, internal or external parasites, or prions, or any reportable or emerging communicable disease that is capable of being transmitted from one animal to another animal or to a human, whether communicated directly or indirectly through an intermediate plant or livestock host, a vector, or the environment.

(7) "Livestock" means cattle, sheep, goats, bison, swine, mules, poultry, horses, alternative livestock as defined in section 35-41.5-102 (1), and all other domesticated animals raised or kept for profit.

(8) "New or emerging disease" means an emerging livestock disease defined as a newly identified pathogen or strain of pathogen, a known pathogen in a new location, or a new presentation of a known pathogen.

(9) "Owner" means the person or entity owning the livestock or property and the owner's officers, members, employees, agents, attorneys, and representatives.

(10) "Quarantine" means an order issued by the commissioner when testing has confirmed the presence of an infectious or contagious disease in livestock, which order isolates specific livestock, premises, counties, districts, or sections of the state; restricts the movement of livestock; and specifies sanitary measures.

(11) "Reportable disease" means an infectious or contagious disease specified by rule as reportable to the state veterinarian.

(12) "State veterinarian" means the state veterinarian of the Colorado department of agriculture or his or her authorized representative.

(13) "Test" or "testing" means or applies to the diagnostic test or any other method approved by the state veterinarian for detecting infectious or contagious diseases in livestock.

Source: L. 2005: Entire article R&RE, p. 447, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-136 as it existed prior to 2005.

35-50-104. State veterinarian and authorized representatives. (1) Subject to section 13 of article XII of the state constitution, the commissioner is authorized to employ a licensed doctor of veterinary medicine as state veterinarian, who will be an authorized representative of the department.

(2) The commissioner may employ, as assistants and authorized representatives, accredited veterinarians who are licensed to practice in Colorado as may be necessary to assist the state veterinarian in carrying out the duties and functions set forth in this article.

(3) The commissioner may commission graduate veterinarians located in various portions of the state, to be known as commissioned state veterinarians. Such commissioned state veterinarians may be called upon by the state veterinarian to perform such special duties in all hazards arising from any livestock emergencies as may be assigned to them, and they shall report to the state veterinarian. Commissioned state veterinarians shall perform only such special duties as may be assigned to them. Such commissioned state veterinarians shall hold their commissions at the pleasure of the commissioner and may be removed at any time.

(4) The commissioner may appoint or employ competent persons to perform duties as assigned by the state veterinarian for disease control or livestock emergencies.

(5) The department shall administer an infectious or contagious disease surveillance, control, and eradication program and shall supervise or be responsible for the supervision of all personnel engaged in any county or area infectious or contagious disease control program. The service of personnel commissioned or appointed pursuant to subsections (3)

and (4) of this section shall be paid for by the livestock owner unless specifically provided for by local, state, or federal funding.

(6) All persons utilized by the commissioner, the department, and the state veterinarian pursuant to this section, whether employed or volunteer, shall be deemed employees of the department for purposes of article 10 of title 24, C.R.S.

Source: L. 2005: Entire article R&RE, p. 448, § 1, effective December 1.

Editor's note: This section is similar to former §§ 35-50-101, 35-50-117, and 35-50-150, as they existed prior to 2005.

Cross references: For the division of animal industry in the department of agriculture, see article 1 of this title and § 24-1-123.

ANNOTATION

For recoverable damages for veterinarian's negligent performance of duty, see State v. Morison, 148 Colo. 79, 365 P.2d 266 (1961) (decided under former law).

35-50-105. Powers and duties of the commissioner. (1) The commissioner is responsible for regulation related to livestock disease or other livestock emergencies among or affecting livestock in the state.

(2) The commissioner is authorized to administer and enforce the provisions of, and any rules adopted pursuant to, this article.

(3) The commissioner may adopt, subject to the commission's approval, all reasonable rules for the administration and enforcement of this article including, but not limited to:

- (a) A designation of livestock diseases to be diagnosed, controlled, or eradicated;
- (b) A designation of livestock diseases to be reported to the state veterinarian;
- (c) The health standards for importation of livestock into the state;
- (d) The standards and requirements for livestock health certificates;
- (e) The standards and requirements for pet animal health certificates, as such certificates may be required pursuant to section 35-50-112 (2);

(f) The standards and requirements for testing livestock for infectious or contagious diseases;

(g) The standards and requirements for vaccinating livestock against infectious or contagious diseases;

(h) The standards and requirements for surveillance, testing, or implementation of disease control or other sanitary measures to prevent the spread of infectious or contagious livestock diseases;

(i) The standards and requirements for the disinfection of premises to prevent the spread of infectious or contagious livestock diseases;

(j) The standards and requirements for identification and traceability of livestock;

(k) The standards and requirements for euthanasia of livestock to prevent the spread of infectious or contagious livestock diseases;

(l) The standards and requirements for disposal of livestock carcasses;

(m) The standards and requirements in preparation for, response to, or recovery from livestock disease or disaster;

(n) The form and manner of disease reporting, as required by section 35-50-108;

(o) Establishment of state emergency preparedness plans related to livestock health;

(p) The standards and requirements for prevention of diseases in livestock; and

(q) Livestock disease prevention by the state veterinarian.

(4) The commissioner may conduct hearings required under sections 35-50-117 and 35-50-118 pursuant to article 4 of title 24, C.R.S., and may use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(5) The commissioner may hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and

duties of the commissioner. Upon failure or refusal of a witness to obey any subpoena, the commissioner may petition the district court, and, upon proper showing, the court may order a witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as contempt of court.

(6) The commissioner may enter into cooperative agreements with any agency or political subdivision of this state or any other state or with any agency of the United States government for the purpose of carrying out the provisions of this article, receiving grants-in-aid, and securing uniformity of rules and regulations. This cooperative agreement may extend to the testing, condemnation, appraising, paying-of indemnities, and other like purposes regarding animal disease control, as the commissioner and appropriate division of the United States department of agriculture may agree upon. When such agreement is effected, the veterinary inspectors of such division, working in cooperation with the commission, have the same power to enforce the provisions of this article as an assistant or commissioned state veterinarian. The legal authorities of any county or municipality in which the state or federal authorities take up the work of infectious or contagious disease control or eradication may appropriate, for aiding in such work, such sums as such authorities may deem adequate and necessary.

(7) The commissioner, alone or in cooperation with other agencies of the state or the federal government, may disseminate information by publication or undertake other educational efforts pertaining to livestock disease diagnosis, control, or eradication and livestock emergency preparedness.

(8) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

Source: L. 2005: Entire article R&RE, p. 449, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-121 as it existed prior to 2005, and the former § 35-50-105 was relocated to § 35-53-131.

35-50-106. Veterinary vaccine and service fund - expenditures - rules. (1) The commissioner may promulgate such rules as are necessary to establish a fund into which the proceeds from the sale of supplies and services shall be deposited. The proceeds from this fund are specifically and continuously appropriated for personnel necessary to carry out the provisions of this article, the purchase of supplies and such other laboratory expenses, and incidental expenses, including travel directly incidental to the infectious or contagious disease control and eradication program, as may be determined by the commissioner.

(2) The moneys in the veterinary vaccine and service fund shall not be transferred or revert to the general fund or to any other fund.

Source: L. 2005: Entire article R&RE, p. 451, § 1, effective December 1. **L. 2009:** Entire section amended, (SB 09-154), ch. 330, p. 1756, § 1, effective August 5.

Editor's note: This section is similar to former § 35-50-146 as it existed prior to 2005, and the former § 35-50-106 was relocated to § 35-53-132.

35-50-107. Disease detection and prevention. Whenever the commissioner reasonably suspects that livestock are in or from an area of concentration or point of distribution where there is a potential for the spread of disease or that the livestock may have been exposed to or are suffering from an infectious or contagious disease, the commissioner may, as a sanitary measure, conduct surveillance or otherwise inspect the suspected livestock, under such rules as the commissioner may adopt.

Source: L. 2005: Entire article R&RE, p. 451, § 1, effective December 1.

Editor's note: The former § 35-50-107 was relocated to § 35-53-133 in 2005.

35-50-108. Mandatory reporting. (1) Any person who knows or has reason to believe that any livestock that belongs to or is in the possession of such person, or any livestock upon such person's premises, has a reportable disease shall immediately report such disease to the state veterinarian.

(2) Whenever any veterinarian licensed in this state suspects a reportable disease in livestock of the state, such veterinarian shall immediately report such findings to the state veterinarian.

(3) Every licensed, accredited veterinarian making tests upon livestock for tuberculosis in this state, immediately after the tests are concluded, shall report the result of the tests of all such livestock tested to the state veterinarian.

(4) Diagnostic laboratories located within the state shall report all positive results of testing for reportable diseases.

(5) Every veterinarian licensed in this state shall report all positive results of any testing for reportable diseases.

(6) Any veterinarian who or diagnostic laboratory that reports, in good faith and in the normal course of business, disease test results pursuant to this section shall be immune from liability in any civil or criminal action brought against such veterinarian or diagnostic laboratory for reporting.

Source: L. 2005: Entire article R&RE, p. 451, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-125 as it existed prior to 2005.

35-50-109. Inspection and testing. (1) Whenever it becomes known to the commissioner that an infectious or contagious disease exists among livestock of the state, the commissioner may inspect all livestock in the state, under such rules as the commissioner may adopt.

(2) Whenever it becomes known to the commissioner that an infectious or contagious disease exists among livestock of the state, the commissioner may compel the testing of all livestock in the state, under such rules as the commissioner may adopt.

(3) Any owner whose livestock are suspected, after epidemiological investigation, of having an infectious or contagious disease shall, upon order of the commissioner, assemble such livestock and provide the necessary facilities for inspection and collection of such samples as may be deemed necessary to conduct tests of such livestock for the infectious or contagious disease, and shall render such assistance as required.

(4) All samples drawn in testing for an infectious or contagious disease shall be forwarded to the department's animal health laboratory or any other laboratory approved by the state veterinarian for testing.

(5) Whenever any livestock are tested, the livestock shall be individually identified, as specified by the commissioner in such rules as the commissioner may adopt. Official identification shall not be removed from such livestock or altered in any fashion.

(6) The owner of livestock ordered tested or treated shall be responsible for the costs of all testing or treatment, unless specifically provided for by local, state, or federal funding.

(7) If the owner of livestock ordered treated or tested, after reasonable notice as determined by the commissioner, fails to dip, spray, test, or otherwise treat such livestock as ordered by the commissioner, the commissioner may seize, or cause to be seized, dipped, sprayed, tested, or otherwise treated, such livestock and hold and sell the same, or such part of the livestock as may be necessary, to pay all costs of the inspection, seizing, caring for, dipping, spraying, testing, or other treatment, together with cost of sale. Such sale shall be made at such time and place, and in such manner, as may be prescribed by the commissioner after not less than three days' nor more than fifteen days' notice of the time, place, and purposes of such sale has been given by the commissioner to the owner of the livestock and to each secured party holding a security interest in the subject livestock, which appears in the list of effective filings as maintained by the central filing officer pursuant to the "Central Filing of Effective Financing Statement Act", article 9.5 of title 4, C.R.S. If personal service of such notice cannot be had within the county in which the livestock are being held by the commissioner, such notice may be given either by personal service outside of such county

or by advertisement in the official state livestock paper. The owner of livestock so seized and held, or any secured party holding a security interest in such livestock, which appears in the list of effective filings as maintained by the central filing officer pursuant to the "Central Filing of Effective Financing Statement Act", article 9.5 of title 4, C.R.S., at any time prior to such sale, may recover possession of the livestock upon payment to the commissioner of the amount of the costs incurred by order of the commissioner against such livestock. Any sum realized from the sale of such livestock over and above the amount of the costs actually incurred against such livestock shall be returned by the commissioner to the owner of such livestock if the owner is known or can by reasonable diligence be found. Otherwise, such surplus shall be placed in the estray fund, subject to the law in effect regarding such fund.

(8) Whenever the state veterinarian finds indications of any infectious or contagious disease among any livestock in this state and the state veterinarian is unable to determine positively the exact nature of such disease, the state veterinarian may order one of the animals so suspected slaughtered in order that a post mortem examination may be made to determine the character of the disease.

(9) Whenever the state veterinarian has good reason to believe that any disease so investigated is contagious or infectious and that such livestock are likely to communicate the disease to other livestock, the state veterinarian may at once establish a hold over such livestock and premises and may take such steps as may be deemed necessary to prevent the spread of such contagion or infection. Such hold shall be legal and binding in the same manner as a quarantine established pursuant to section 35-50-111, and any violation of such hold or order of the state veterinarian shall be considered an unlawful act pursuant to section 35-50-116.

(10) Whenever in the opinion of the state veterinarian there exists within this state a livestock disease that he or she is unable to diagnose or identify, the commissioner may call upon the veterinary department of Colorado state university to cause scientific investigation to be made to determine the exact character of such disease. Colorado state university may charge the actual and necessary direct expense of laboratory and diagnostic procedures connected therewith.

Source: L. 2005: Entire article R&RE, p. 452, § 1, effective December 1.

Editor's note: This section is similar to former §§ 35-50-109, 35-50-115, 35-50-118, and 35-50-139 as they existed prior to 2005.

ANNOTATION

Annotator's note. Since § 35-50-109 is similar to § 35-50-109 and § 35-50-115 as they existed prior to the 2005 repeal and reenactment of this article, relevant cases construing those provisions have been included in the annotations to this section.

This section and §§ 35-50-115 and 35-50-118 were designed to protect not only general

public but also class of persons, i.e., cattle owners and the purchasers of cattle sold at a public sale. *State v. Morison*, 148 Colo. 79, 365 P.2d 266 (1961).

For authority conferred being valid exercise of police power, see *People v. Lange*, 48 Colo. 428, 110 P. 68 (1910).

35-50-110. State livestock disease diagnostic laboratories. The rocky mountain regional animal health laboratory and the Colorado state university veterinary diagnostic laboratories, collectively known as the state livestock disease diagnostic laboratories, shall function to provide disease testing to support the department's livestock disease programs. The laboratories shall be scaled to provide testing of such volume as to meet the potential disease control, protection, and surveillance needs of the livestock industry of the state.

Source: L. 2005: Entire article R&RE, p. 454, § 1, effective December 1.

Editor's note: This section is similar to § 35-50-119, as it existed prior to 2005, and the former § 35-50-110 was relocated to § 35-50-111 and § 35-50-119.

35-50-111. Quarantine. (1) Whenever the commissioner deems it necessary to quarantine any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of an infectious or contagious disease among the livestock within the state, the commissioner may, through the state veterinarian, call on all sheriffs or other peace officers of any county within the state to assist in maintaining such quarantine and to arrest anyone who may violate such quarantine or any rules made by the commissioner for the purpose of maintaining such quarantine. It is the duty of all sheriffs or other peace officers to act in such cases when so called upon, and they shall be allowed such recompense as is provided by statute for similar services.

(2) The commissioner may place a hold upon any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of an infectious or contagious disease when clinical signs and symptoms suggest the presence of the disease and laboratory confirmation is pending.

(3) Once testing has confirmed the presence of an infectious or contagious disease, the commissioner may quarantine any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of any infectious or contagious disease within the state, under such rules as the commissioner may adopt.

(4) Whenever the commissioner finds it necessary to quarantine any livestock, ranch, farm, premises, or portion of this state because of an infectious or contagious disease, the commissioner may hold in quarantine such ranch, farm, premises, or part of this state as the commissioner may deem necessary after all livestock have been removed therefrom, until such time as in the judgment of the state veterinarian there is no further risk of exposing livestock to disease by permitting them to inhabit such quarantined area.

(5) Held or quarantined livestock shall be treated, fed, and cared for at the expense of the owner. All expenses of a hold or quarantine shall be borne by the owner of the livestock so held or quarantined and shall constitute a lien on such livestock.

Source: L. 2005: Entire article R&RE, p. 454, § 1, effective December 1.

Editor's note: This section is similar to former §§ 35-50-110 and 35-50-116 as they existed prior to 2005, and the former § 35-50-111 was relocated to § 35-50-113.

Cross references: For quarantine procedures affecting the movement of livestock, see § 35-53-111.

35-50-112. Importation of livestock - pet animal health certificates. (1) It is unlawful for any person, firm, or corporation to ship or drive into Colorado any livestock unless such livestock are accompanied by an official health certificate, except as may be set forth in rules promulgated by the commissioner. Such health certificate shall be in the form and manner as prescribed by the commissioner. No livestock known to be affected with, or exposed to, any infectious or contagious disease may be imported into Colorado except as authorized by rule. Livestock shall also meet all federal interstate requirements.

(2) The commissioner may promulgate rules creating and requiring pet animal health certificates. For the purposes of this section, "pet animal" means dogs, cats, rabbits, guinea pigs, hamsters, mice, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild, domestic, or hybrid animal kept as a household pet, except livestock as defined in section 35-50-103 (7).

Source: L. 2005: Entire article R&RE, p. 455, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-102 as it existed prior to 2005.

Cross references: For sanitary rules as to movement of livestock, see §§ 35-53-111 and 35-53-112.

35-50-113. Condemnation of livestock. (1) Whenever the state veterinarian reports to the commission that there exists an outbreak of contagious or infectious disease among

livestock of this state of such a character as to endanger and imperil the livestock of the state, the commission, upon approval of the governor, may issue an order of condemnation to condemn and destroy any livestock so infected or any livestock that has been exposed to or is deemed by the commission capable of communicating such contagious or infectious disease to other livestock and to condemn and destroy any barns, sheds, corrals, pens, or other property that the commission may determine is necessary to be destroyed in order to prevent the spread of such contagion or infection. Such condemnation and destruction shall take place only when in the opinion of the commission and the governor an emergency exists and such action is justified and necessary for the safety and protection of the livestock of this state.

(2) Whenever the state agricultural commission finds it necessary to condemn and destroy any animals or property within this state because of any contagious or infectious disease, such animals or property shall not be destroyed until after a fair appraisal has been made of the value of such animals or property by three appraisers, one to be appointed by the state agricultural commission, one by the owner of the property to be destroyed, and the third to be selected by these two. Such appraisers shall make a report to the commission under oath as to their appraisal and the commission shall forward such appraisal to the governor with such recommendation as to the proportion of such appraisal to be considered a just bill against the state of Colorado as the commission may think right.

(3) Any dispute or protest regarding the appraisal shall not delay destruction of the animals or property.

Source: L. 2005: Entire article R&RE, p. 455, § 1, effective December 1.

Editor's note: This section is similar to former §§ 35-50-111 and 35-50-113 as they existed prior to 2005.

ANNOTATION

This section defines the Colorado department of agriculture's police power regarding an outbreak of contagious or infectious disease among livestock and establishes the parameters

that must be followed under that power. *Keyah Grande, LLC v. Colo. Dept. of Agric.*, 159 P.3d 727 (Colo. App. 2006).

35-50-114. Indemnification of livestock owners. (1) To meet the emergency caused by any outbreak of contagious or infectious disease, the governor may cause to be issued the state's certificate of indebtedness with which to indemnify owners of property destroyed to pay the necessary costs and expense of exterminating and eradicating such contagion or infection. This section shall not apply to the diseases for which federal indemnity is paid to the owners. In the case of a disease for which federal indemnity is paid, combined state and federal indemnity shall not exceed actual appraised value when an appraisal is required.

(2) The commissioner, upon the recommendation of the state veterinarian, may authorize the payment of indemnity to any livestock owner whose herd, pursuant to written agreement with the state veterinarian, is sold for slaughter or destroyed because it is exposed to or diagnosed with an infectious or contagious disease; except that such indemnification, when combined with any other moneys received by the owner for the livestock, shall not exceed ninety percent of the market value for animals of comparable grade and of the same or similar type. Notwithstanding any provision of this section to the contrary, indemnity shall not be paid for brucellosis reactor livestock.

(3) There is hereby created in the state treasury the diseased livestock indemnity fund. The unexpended and unencumbered balance of moneys appropriated by the general assembly for payments for the services of commissioned or appointed personnel pursuant to section 35-50-104 shall be credited to the diseased livestock indemnity fund, upon approval of the commissioner, at the end of each fiscal year. The moneys in the fund are continuously appropriated for the purpose of making payments as provided in this section.

(4) No indemnity shall be paid when:

- (a) The livestock are owned by the United States or a state, county, municipality, or other government entity;
- (b) The livestock were brought into the state contrary to this article, the rules of the commissioner, or an order of the commissioner;
- (c) The livestock were found to be diseased upon arrival in the state or were exposed to the disease prior to their arrival;
- (d) The livestock were previously affected by any other disease that by its nature and development was incurable and necessarily fatal;
- (e) The livestock were purchased at the time of a quarantine or purchased when due diligence and caution would have shown the livestock to be diseased;
- (f) The owner of the livestock willfully exposed the livestock to the disease;
- (g) The owner knew the livestock to be diseased or had notice of the disease at the time the livestock came into the owner's possession;
- (h) The owner or the owner's agent has not used reasonable diligence to prevent disease or exposure to disease;
- (i) The owner or the owner's agent has not complied with this article, the rules adopted by the commissioner, or an order issued by the commissioner;
- (j) The destruction order was not complied with within the specified time period; or
- (k) The owner attempted to unlawfully or improperly obtain indemnity funds.

Source: L. 2005: Entire article R&RE, p. 456, § 1, effective December 1.

Editor's note: This section is similar to former §§ 35-50-114 and 35-50-140.5 as they existed prior to 2005.

35-50-115. Cervidae disease revolving fund - creation. (1) (a) The commission may levy an assessment on the owners of alternative livestock cervidae or captive wildlife cervidae, which shall be transmitted to the state treasurer, who shall credit the same to the cervidae disease revolving fund, which fund is hereby created. This assessment shall be determined by the commission, upon the recommendation of the captive wildlife and alternative livestock board created in section 33-1-121, C.R.S., and shall be in an amount, not to exceed eight dollars per head of cervidae per year, reflecting the direct and indirect expenses of carrying out the purposes of this section. The fund shall be maintained at a level of no more than two hundred thousand dollars and shall be administered by the commission pursuant to the recommendations of the captive wildlife and alternative livestock board. Administration of the fund shall include setting a minimum reserve level for the fund. An assessment shall not be levied or collected on cervidae owned by a zoological park that is accredited by the American zoo and aquarium association. A zoological park that does not pay into the fund is not eligible for indemnification under this section.

(b) If the fund reaches a level of two hundred thousand dollars or more, the commission shall cease making any assessments until such time as the level of the fund falls below two hundred thousand dollars and the commission determines that a levy is necessary.

(2) (a) The moneys in the fund may be used to indemnify owners of cervidae destroyed for the control of contagious and infectious diseases.

(b) Combined state and federal indemnity shall not exceed eighty percent of market value of the destroyed cervidae, as determined by the captive wildlife and alternative livestock board.

(c) The amount of indemnification payments to owners of cervidae destroyed under order of the state veterinarian for the control of contagious and infectious disease shall be determined by the captive wildlife and alternative livestock board, subject to approval by the commission.

(3) All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of the fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly, acting by bill. Moneys in the fund are hereby continuously appropriated to the commission for direct and indirect expenses incurred in carrying out the purposes of this section.

Source: L. 2005: Entire article R&RE, p. 457, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-114.5 as it existed prior to 2005.

35-50-116. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

- (a) To refuse or fail to comply with the provisions of this article;
- (b) To refuse or fail to comply with any rules adopted by the commissioner pursuant to this article or with any lawful order issued by the commissioner;
- (c) To refuse or fail to comply with a cease-and-desist order issued pursuant to section 35-50-117;
- (d) To impersonate any state official or authorized representative as defined in this article;
- (e) To refuse to permit the state veterinarian to inspect and test any livestock pursuant to this article or rules adopted by the commissioner pursuant to this article. Each day of refusal by the owner of livestock to submit such livestock for inspection and testing shall be deemed a separate offense.
- (f) To violate any provision of a hold or quarantine;
- (g) To fail or refuse to identify livestock pursuant to section 35-50-109 or rules adopted by the commissioner pursuant to section 35-50-105 (3) (j) or to remove or tamper with such identification;
- (h) To fail or refuse to report a disease pursuant to section 35-50-108;
- (i) To knowingly permit livestock infected with or exposed to an infectious or contagious disease to run at large or come into contact with another animal, except as permitted by rule adopted by the commissioner pursuant to this article;
- (j) To harbor, sell, or otherwise dispose of any livestock or livestock part infected with or exposed to a reportable disease unless specifically permitted by the state veterinarian and unless such disposal is fully disclosed;
- (k) To import into the state any livestock or livestock part infected with or exposed to any infectious or contagious disease, except as permitted by rule adopted by the commissioner pursuant to this article;
- (l) To harbor, sell, or otherwise trade in or import into the state any infectious agent, host, or vector, except as permitted by rule adopted by the commissioner pursuant to this article; or
- (m) To alter or falsify any health certificate issued pursuant to section 35-50-112.

Source: L. 2005: Entire article R&RE, p. 457, § 1, effective December 1.

35-50-117. Enforcement. (1) The commission or its designee shall enforce this article.

(2) Whenever the commission or its designee has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, the commission or its designee may issue an order requiring a person to cease and desist from such violation. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted in accordance with article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commission or its designee possesses satisfactory evidence that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commission or its designee may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commission or its designee

shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commission or its designee to post a bond.

Source: L. 2005: Entire article R&RE, p. 459, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-145.2 as it existed prior to 2005, and the former § 35-50-117 was relocated to § 35-50-104.

35-50-118. Civil penalties. (1) A person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or by the commission or the commission's designee. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule on at least one prior occasion occurring after March 23, 1995.

(2) No civil penalty may be imposed by the commission or its designee unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commission or its designee is unable to collect the civil penalty, or if a person fails to pay all or a set portion of the civil penalty as determined by the commission or its designee, the commission may bring suit to recover such amount plus costs and attorney fees by action in a court of competent jurisdiction.

(4) Before imposing any civil penalty, the court, the commission, or the commission's designee may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the diseased livestock indemnity fund created in section 35-50-114 (3).

Source: L. 2005: Entire article R&RE, p. 459, § 1, effective December 1.

Editor's note: This section is similar to former § 35-50-145.1 as it existed prior to 2005, and the former § 35-50-118 was relocated to § 35-50-109.

ANNOTATION

Court limited to legislated penalties. A court may not void a contract which was entered without a brucellosis certificate as that would be enlarging upon the penalties provided by the

general assembly in this section. *Gladden v. Guyer*, 162 Colo. 451, 426 P.2d 953 (1967) (decided under former law).

35-50-119. Criminal penalties. (1) Except as set forth in subsection (2) of this section, any person, firm, partnership, association, or corporation, and any officer or agent thereof, who violates any of the provisions of this article or any lawful order or rule of the commissioner commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars and not more than two thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) A person who moves or causes to be moved any single head or any herd of cattle, horses, sheep, goats, swine, poultry, or other livestock from a hold or quarantined area in violation of a hold or quarantine order or who knowingly or unlawfully introduces a reportable disease into the state commits a class 1 misdemeanor and, upon conviction thereof, shall be punished pursuant to title 18, C.R.S. In the case of a second or subsequent conviction under this section, a sentence of imprisonment within the minimum and maximum terms shall be mandatory and shall not be subject to suspension. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.

Source: L. 2005: Entire article R&RE, p. 460, § 1, effective December 1.

Editor’s note: This section is similar to former §§ 35-50-110 and 35-50-145 as they existed prior to 2005, and the former § 35-50-119 was relocated to § 35-50-110.

Cross references: For quarantine procedures affecting the movement of livestock, see § 35-53-111.

35-50-120. Information sharing and analysis. (1) Except as set forth in subsection (2) of this section, information obtained and maintained by the commissioner pursuant to this article and rules promulgated pursuant to this article and the results of surveillance and investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until the matter is dismissed without further action or until a quarantine is issued.

(2) As to any enforcement actions taken or the imposition of civil penalties, complaints of record made to the commissioner and the results of the commissioner’s investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a respondent or other official action is taken.

Source: L. 2005: Entire article R&RE, p. 460, § 1, effective December 1.

35-50-121. Rights of secured parties. Each secured party, whose security interest in the subject livestock appears in the list of effective filings as maintained by the central filing officer pursuant to the “Central Filing of Effective Financing Statement Act”, article 9.5 of title 4, C.R.S., prior to the commissioner’s payment to the owner of any excess sales proceeds pursuant to section 35-50-109 (7); prior to the issuance to the owner of the state’s certificate of indebtedness pursuant to section 35-50-114 (1); or prior to the commissioner’s authorization of payment of indemnity pursuant to section 35-50-114 (2) shall have a right to the proceeds of any such payment or indemnity or to such certificate of indebtedness, which is prior to that of the owner, and the commissioner or the governor, as the case may be, shall cause the foregoing to be paid or issued jointly to each such secured party and to the owner.

Source: L. 2005: Entire article R&RE, p. 461, § 1, effective December 1.

Editor’s note: The former § 35-50-121 was relocated to § 35-50-105 in 2005.

35-50-122. Savings clause. Nothing in this article diminishes or supersedes the current jurisdiction or the authorities of the parks and wildlife commission or the agriculture commission to regulate captive wildlife and alternative livestock.

Source: L. 2005: Entire article R&RE, p. 461, § 1, effective December 1. **L. 2012:** Entire section amended, (HB 12-1317), ch. 248, p. 1238, § 102, effective June 4.

ARTICLE 50.5

Confinement of Calves Raised for
Veal and Pregnant Sows

Cross references: For the legislative declaration contained in the 2008 act enacting this article, see section 1 of chapter 228, Session Laws of Colorado 2008.

35-50.5-101.	Definitions.		exceptions - penalty.
35-50.5-102.	Confinement of calves raised for veal and pregnant sows -	35-50.5-103.	Applicability.

- 35-50.5-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Calf raised for veal” means a member of the bovine species kept for the purpose of producing the food product known as veal.
 - (2) “Farrowing” means the process of a gestating sow giving birth to offspring.
 - (3) “Farrowing unit” means a structure in which a single gestating sow is kept immediately prior to and during farrowing for the purposes of providing care to the sow and the sow’s offspring.
 - (4) “Gestating sow” means a confirmed pregnant member of the porcine species.
 - (5) “Person” shall have the meaning set forth in section 2-4-401, C.R.S.

Source: L. 2008: Entire article added, p. 861, § 2, effective May 14.

- 35-50.5-102. Confinement of calves raised for veal and pregnant sows - exceptions - penalty.** (1) No person shall confine a calf raised for veal or gestating sow in any manner other than the following:
- (a) A calf raised for veal shall be kept in a manner that allows the calf to stand up, lie down, and turn around without touching the sides of its enclosure.
 - (b) A gestating sow shall be kept in a manner that allows the sow to stand up, lie down, and turn around without touching the sides of its enclosure until no earlier than twelve days prior to the expected date of farrowing. At that time, a gestating sow may be kept in a farrowing unit.
- (2) This section shall not apply during the following:
- (a) Periods of scientific or agricultural research;
 - (b) Examination, testing, or individual veterinary treatment;
 - (c) Transportation;
 - (d) Exhibitions at rodeos, fairs, or youth programs; or
 - (e) Slaughter pursuant to article 33 of this title and rules adopted pursuant to article 33 of this title.
- (3) A person who violates any provision of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2008: Entire article added, p. 862, § 2, effective May 14.

- 35-50.5-103. Applicability.** (1) This article shall apply to:
- (a) Calves raised for veal, on and after January 1, 2012; and
 - (b) Gestating sows, on and after January 1, 2018.

Source: L. 2008: Entire article added, p. 862, § 2, effective May 14.

ARTICLE 51

Animal Biological Products

35-51-101.	Manufacturer required to have federal license.	35-51-103.	Civil penalties.
35-51-102.	Penalty for violation.	35-51-104.	Enforcement.

35-51-101. Manufacturer required to have federal license. Any person, firm, or corporation operating a plant or laboratory in this state for the manufacture of animal biological products, including animal serums, vaccines, bacterins, and animal virus, offered for sale and recommended by the manufacturer for the treatment or prevention of infectious or contagious animal diseases shall secure from the United States department of agriculture, bureau of animal industry, division of serum-virus control, a federal license authorizing the manufacture of said veterinary biological products and their sale in interstate commerce.

This article shall not apply to the manufacture or sale of animal biological products manufactured under United States veterinary license or produced by the United States department of agriculture, bureau of animal industry.

Source: L. 41: p. 94, § 1. CSA: C. 58, § 75. CRS 53: § 48-7-1. C.R.S. 1963: § 48-6-1.

Editor's note: The functions of the bureau of animal industry were transferred to the secretary of agriculture by the federal reorganization plan of 1947, 61 Stat. 952.

35-51-102. Penalty for violation. It is unlawful to manufacture or sell animal biological products as defined in section 35-51-101, except in compliance with the provisions of this article, and any person, firm, or corporation violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

Source: L. 41: p. 94, § 2. CSA: C. 58, § 76. CRS 53: § 48-7-2. C.R.S. 1963: § 48-6-2.

35-51-103. Civil penalties. (1) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule on at least one prior occasion occurring after March 23, 1995.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect the civil penalty, or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the general fund.

Source: L. 95: Entire section added, p. 66, § 3, effective March 23.

35-51-104. Enforcement. (1) The commissioner shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this

article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 95: Entire section added, p. 68, § 3, effective March 23.

ARTICLE 52

Hogs

Cross references: For regulation of commercial hog facilities, see §§ 25-7-138 and 25-8-501.1.

35-52-101.	Definitions.	35-52-110.	Dead hogs burned. (Repealed)
35-52-102.	Importing hogs - affidavit. (Repealed)	35-52-111.	Penalty.
35-52-103.	Cars must be disinfected. (Repealed)	35-52-111.1.	Civil penalties.
35-52-104.	Disposition of copies of affidavit. (Repealed)	35-52-111.2.	Enforcement.
35-52-105.	Cars placarded. (Repealed)	35-52-112.	Selling, distributing, and using virulent virus. (Repealed)
35-52-106.	Railroad stockyards disinfected. (Repealed)	35-52-113.	Garbage cooking.
35-52-107.	Chutes and yards disinfected. (Repealed)	35-52-114.	Permit to be obtained.
35-52-108.	Local shipments treated as interstate. (Repealed)	35-52-115.	Revocation of permit.
35-52-109.	Handling at destination. (Repealed)	35-52-116.	Premises sanitation.
		35-52-117.	Premises inspection.
		35-52-118.	Administration and equipment.
		35-52-119.	Exclusions. (Repealed)

35-52-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Garbage" means all refuse, animal or vegetable, and includes all waste material, byproducts of a kitchen, restaurant, hospital, hotel, or slaughterhouse, and every refuse accumulation of animal, fruit, or vegetable matter, liquid or otherwise but excludes such vegetable products as leaves and tops of vegetable plants which have not been mixed with or exposed to or which do not contain any other garbage or waste product prior to feeding to swine.

Source: L. 65: p. 229, § 3. C.R.S. 1963: § 8-6-12.

35-52-102. Importing hogs - affidavit. (Repealed)

Source: L. 13: p. 596, § 1. C.L. § 3259. CSA: C. 160, § 189. CRS 53: § 8-6-1. C.R.S. 1963: § 8-6-1. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-103. Cars must be disinfected. (Repealed)

Source: L. 13: p. 596, § 2. C.L. § 3260. CSA: C. 160, § 190. CRS 53: § 8-6-2. C.R.S. 1963: § 8-6-2. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-104. Disposition of copies of affidavit. (Repealed)

Source: L. 13: p. 596, § 3. C.L. § 3261. CSA: C. 160, § 191. CRS 53: § 8-6-3. C.R.S. 1963: § 8-6-3. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-105. Cars placarded. (Repealed)

Source: L. 13: p. 597, § 4. C.L. § 3262. CSA: C. 160, § 192. CRS 53: § 8-6-4. C.R.S. 1963: § 8-6-4. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-106. Railroad stockyards disinfected. (Repealed)

Source: L. 13: p. 597, § 5. C.L. § 3263. CSA: C. 160, § 193. CRS 53: § 8-6-5. C.R.S. 1963: § 8-6-5. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-107. Chutes and yards disinfected. (Repealed)

Source: L. 13: p. 597, § 6. C.L. § 3264. CSA: C. 160, § 194. CRS 53: § 8-6-6. C.R.S. 1963: § 8-6-6. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-108. Local shipments treated as interstate. (Repealed)

Source: L. 13: p. 597, § 7. C.L. § 3265. CSA: C. 160, § 195. CRS 53: § 8-6-7. C.R.S. 1963: § 8-6-7. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-109. Handling at destination. (Repealed)

Source: L. 13: p. 597, § 8. C.L. § 3266. CSA: C. 160, § 196. CRS 53: § 8-6-8. C.R.S. 1963: § 8-6-8. L. 65: p. 228, § 1. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-110. Dead hogs burned. (Repealed)

Source: L. 13: p. 598, § 9. C.L. § 3267. CSA: C. 160, § 197. CRS 53: § 8-6-9. C.R.S. 1963: § 8-6-9. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-111. Penalty. Any person, firm, partnership, or corporation violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

Source: L. 13: p. 598, § 10. C.L. § 3268. CSA: C. 160, § 198. CRS 53: § 8-6-10. C.R.S. 1963: § 8-6-10. L. 65: p. 228, § 2.

35-52-111.1. Civil penalties. (1) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule on at least one prior occasion occurring after March 23, 1995.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect the civil penalty, or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the general fund.

Source: L. 95: Entire section added, p. 69, § 4, effective March 23.

35-52-111.2. Enforcement. (1) The commissioner shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 95: Entire section added, p. 69, § 4, effective March 23.

35-52-112. Selling, distributing, and using virulent virus. (Repealed)

Source: L. 65: p. 229, § 3. C.R.S. 1963: § 8-6-11. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

35-52-113. Garbage cooking. (1) It is unlawful for any person, firm, partnership, or corporation, including eleemosynary institutions, to feed garbage to animals unless such garbage has been heated throughout to boiling or equivalent temperature for thirty minutes or heated according to a method specifically promulgated by the state agricultural commission; but this requirement shall not apply to an individual who feeds to his own animals only the garbage obtained from his household.

(2) Garbage to be fed to swine located within the state of Colorado shall be cooked or heated as provided in subsection (1) of this section by one or more of the following methods:

- (a) Wet steaming or boiling in an open vat;
- (b) Dry steaming or boiling in a jacketed kettle;
- (c) Steaming in a pressure cylinder;
- (d) Steam boilers; or
- (e) Direct heating.

Source: L. 65: p. 229, § 3. C.R.S. 1963: § 8-6-13.

35-52-114. Permit to be obtained. Prior to the feeding of garbage to any swine located in the state of Colorado, the owner or feeder, as the case may be, shall first obtain a permit from the state agricultural commission. The applicant for a garbage feeding permit shall certify in the application that he has facilities for cooking garbage in one or more of the methods described in section 35-52-113 (2). The state agricultural commission must, within a reasonable time, ascertain that such facilities are as represented and, if the requirements of section 35-52-113 can be fulfilled, issue a permit to the applicant.

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-14.

35-52-115. Revocation of permit. Upon receipt of evidence that any person having a permit under this article has violated or failed to comply with any of the provisions of this article or any of the rules or regulations promulgated under this article, the state agricultural

commission may order a hearing for the purpose of reviewing the evidence and determining the true facts. If said facts support the violation, the commission may revoke such permit or may refuse to issue a permit to an applicant therefor.

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-15.

35-52-116. Premises sanitation. Premises shall be free of collections of unused garbage and waste materials. Rat and fly control measures shall be practiced as a further means of prevention of the spread of diseases.

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-16.

35-52-117. Premises inspection. Any authorized representative of the department of agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of the conditions relating to the treating of garbage to be fed to swine as required by this article.

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-17.

35-52-118. Administration and equipment. The department of agriculture is charged with administration and enforcement of this article in conjunction with such rules and regulations as may be promulgated by the state agricultural commission to carry out its provisions.

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-18.

35-52-119. Exclusions. (Repealed)

Source: L. 65: p. 230, § 3. C.R.S. 1963: § 8-6-19. L. 81: Entire section repealed, p. 1724, § 1, effective April 29.

ARTICLE 53

Transportation of Livestock

35-53-101.	Brand inspection fee - minimum fee - waiver permit.	35-53-113.	Definitions.
35-53-102.	Duties of brand inspector.	35-53-114.	Inspector may refuse certificate.
35-53-103.	False report - certificate - penalty.	35-53-115.	Inspection and transportation of hides - fee - records.
35-53-104.	Certificate needed for shipment. (Repealed)	35-53-116.	Hides inspected - fee - seizure.
35-53-105.	Inspection before shipment - place.	35-53-117.	Officer may inspect vehicle.
35-53-106.	Substitution of animals - penalty.	35-53-118.	Officer may sell carcasses.
35-53-107.	Disposition of stock taken by officer.	35-53-119.	Livestock, carcasses, or proceeds of sale.
35-53-108.	Disposition of estrays.	35-53-120.	Penalty.
35-53-109.	Amount received paid to owner.	35-53-121.	Owners' transportation permit.
35-53-110.	Proceeds claimed within three years.	35-53-122.	Duty to exhibit permit.
35-53-111.	Sanitary rules as to movement of livestock - quarantine - penalty.	35-53-123.	Inspection report of officer.
35-53-112.	Shipping prior to inspection - penalty.	35-53-124.	Penalty.
		35-53-125.	Inspection at point of origin.
		35-53-126.	Inspection at market - penalty.
		35-53-127.	Brand inspection contracts.
		35-53-128.	Brand inspectors - powers of arrest.

35-53-129.	Permanent permit for rodeo and other horses - rules.	35-53-131.	Sheep inspection districts.
35-53-130.	Annual transportation permit for cattle or alternative live-stock - rules.	35-53-132.	Failure to give notice.
		35-53-133.	Inspection fee - range move-ments.

35-53-101. Brand inspection fee - minimum fee - waiver permit. (1) As a means of financing the operations of the state board of stock inspection commissioners, the board is hereby authorized to levy and collect, through authorized brand inspectors, a per head inspection fee not to exceed the amount specified in section 35-41-104 on all livestock inspected. In addition, the board is authorized to levy and collect through authorized brand inspectors a minimum fee of not less than the amount specified in section 35-41-104 from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law. The inspection fee established pursuant to this subsection (1), but not the minimum fee, shall apply when branded or unbranded cattle, horses, or mules are being consigned to a Colorado licensed public livestock market or a licensed slaughter plant. It is the duty of all authorized Colorado brand inspectors to inspect all cattle, horses, and mules, except as exempt by law, that are offered for sale or to be moved interstate or intrastate and collect the inspection fee and minimum fee thereon. Within the limits prescribed by this subsection (1), the state board of stock inspection commissioners shall determine the amount of the inspection fee and minimum fee that shall be collected by authorized brand inspectors from the owner or person in charge of said cattle, horses, or mules before issuing a certificate of brand inspection granting leave to the owner or person in charge to offer the brand inspected cattle, horses, or mules for sale or movement interstate or intrastate. The inspection fee and minimum fee so collected shall be reported and transmitted to the state board of stock inspection commissioners at such time and in such manner as the board shall by regulation require.

(2) When any individual, firm, association, partnership, or corporation, referred to in this article as "person", who owns or has had under control by lease or grazing permit for not less than five years a headquarters ranch or farm and who moves any cattle, horses, or mules from the headquarters place to another grazing or feeding ground that is also owned by the person or that has been controlled by lease or by grazing permit for not less than five years by the person, or when the person moves any cattle, horses, or mules from the grazing or feeding ground within this state to the person's headquarters ranch or farm in this state, the person, upon payment of a fee in an amount determined by the board by rule, may apply to the state board of stock inspection commissioners for and may be granted a brand inspection fee waiver permit, irrespective of the fact such headquarters ranch or farm and the other grazing or feeding grounds exceed seventy-five miles from the point of origin provided for in section 35-53-105 (4) (f) or that the grazing or feeding grounds are outside this state. The brand inspection fee waiver permit shall entitle the permittee to move cattle, horses, and mules for grazing or feeding purposes, with no change of ownership involved, between the headquarters ranch or farm and the other grazing or feeding grounds, with no charge for brand inspection and no collection of a beef board fee. If the livestock are moved outside this state, the permittee shall guarantee that, if, for any reason, the livestock are not returned to the Colorado ranch or farm, the permittee will immediately pay the required brand inspection and beef board fee to the board.

Source: L. 03: p. 439, § 16. R.S. 08: § 6406. L. 13: p. 592, § 2. L. 21: p. 751, § 1. C.L. § 3208. L. 27: p. 665, § 1. CSA: C. 160, § 125. L. 43: p. 585, § 1. CRS 53: § 8-3-1. C.R.S. 1963: § 8-3-1. L. 65: p. 223, § 1. L. 67: p. 194, § 1. L. 73: p. 220, § 1. L. 74: (1) R&RE, p. 214, § 1, effective February 27. L. 89: (2) amended, p. 1405, § 3, effective May 16. L. 90: (1) amended, p. 1848, § 48, effective May 31. L. 93: (2) amended, p. 1791, § 85, effective June 6. L. 98: (1) amended, p. 273, § 8, effective August 5. L. 2004: (2) amended, p. 650, § 12, effective July 1.

Cross references: For additional fees to be collected on inspection of cattle and calves, see § 35-57-117.

35-53-102. Duties of brand inspector. It is the duty of the brand inspector, who shall be notified as provided in section 35-53-105, or shall be selected by the board of stock inspection commissioners, to inspect the brands and earmarks of any cattle, horses, or mules to be transported by rail, truck, or other conveyance from any point within this state to any point within or without the state or to be driven out of the state, and to make a report to the state board of stock inspection commissioners, which he shall certify to as correct, of the result of such inspection at least once every thirty days or oftener if in the opinion of the board of stock inspection commissioners it is necessary to do so. It is also the duty of said brand inspector to furnish to any person, firm, association, or corporation, or any agents, servants, or employees thereof, having cattle, horses, or mules destined to be so shipped or driven, a certificate to the effect that he has duly inspected the brands and earmarks of any such cattle, horses, or mules enumerated and designated in the notice furnished such brand inspector.

Source: L. 03: p. 441, § 21. R.S. 08: § 6412. C.L. § 3214. L. 27: p. 668, § 5. CSA: C. 160, § 131. CRS 53: § 8-3-2. C.R.S. 1963: § 8-3-2.

35-53-103. False report - certificate - penalty. Any inspector who knowingly makes any false certificate under the provisions of section 35-53-102 to the state board of stock inspection commissioners is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 03: p. 442, § 22. R.S. 08: § 6413. C.L. § 3215. CSA: C. 160, § 132. CRS 53: § 8-3-3. C.R.S. 1963: § 8-3-3.

35-53-104. Certificate needed for shipment. (Repealed)

Source: L. 03: p. 440, § 18. L. 07: p. 591, § 1. R.S. 08: § 6408. C.L. § 3210. L. 27: p. 666, § 3. CSA: C. 160, § 127. L. 51: p. 785, § 1A. L. 53: p. 584, § 2. CRS 53: § 8-3-5. C.R.S. 1963: § 8-3-4. L. 84: Entire section repealed, p. 944, § 1, effective March 26.

35-53-105. Inspection before shipment - place. (1) Whenever any cattle, horses, or mules are to be transported from any point within this state to any point within or without this state, it is the duty of the transportation company and the person selling and delivering cattle, horses, or mules to other persons for transportation to make application to the state board of stock inspection commissioners or some duly authorized brand inspector of the board to inspect the brands and earmarks of any such cattle, horses, or mules, stating in the application the time when and the place where the animals will be ready for inspection, giving sufficient notice for the inspector to appear at the place designated in such application, and to provide adequate corrals to inspect such cattle, horses, or mules in daylight. It is the duty of such inspector, or some other inspector to be designated by the board, to appear at the place designated in such application and inspect such cattle, horses, or mules, make the necessary record, and give the necessary certificate required by the provisions of this article.

(2) Whenever any cattle, horses, or mules are to be driven from any point within this state to any point within or without this state, it is the duty of the owner or person in charge of such animals to make application to the state board of stock inspection commissioners or some duly authorized inspector of the board to have the same inspected.

(3) In all cases of cattle, horses, or mules transported by rail, the place of inspection shall be at some stockyard at the proposed point of shipment of such animals. All cattle, horses, or mules to be transported by truck or by similar conveyance within this state or beyond its boundaries shall be inspected at the point of origin or some convenient unloading point en route designated by the state board of stock inspection commissioners or one of its inspectors before being transported from the state or within the state. Cattle, horses, or

mules to be driven beyond the boundaries of the state shall be inspected not less than three miles from the state line or at some convenient point designated by the state board of stock inspection commissioners or by one of its duly authorized brand inspectors before being driven from the state.

(4) This section shall not apply to:

(a) Unbranded registered purebred horses leaving a Colorado licensed race track that are accompanied by a bill of lading or statement showing the point of loading and the destination;

(b) and (c) (Deleted by amendment, L. 92, p. 161, § 1, effective April 2, 1992.)

(d) Cattle, horses, or mules being driven or transported by truck to a Colorado licensed public livestock market within the state, where Colorado brand inspection is maintained, that are accompanied by a shipper's certificate and agreement, signed by the owner or person in charge and showing the point of origin, the point of destination, and the brands on such cattle, horses, or mules being transported;

(e) Cattle being transported by truck to a Colorado licensed packing house where all of the cattle slaughtered are inspected by a Colorado brand inspector immediately prior to slaughter, accompanied by a shipper's certificate and agreement, signed by the owner, showing the point of origin, the point of destination, and the brands on such cattle being transported;

(f) Cattle, horses, or mules being driven or transported within the boundaries of the state between established ranges, pastures, and properties owned, leased, or under the control of the owner of such livestock, so long as such livestock are not being driven or transported more than seventy-five miles from the point of origin and are not changing ownership. If such livestock are being driven or transported by road, the shortest passable road route shall be used. All such cattle, horses, or mules being transported and excepted by this paragraph (f) shall be accompanied by a statement, signed by the owner or person in charge, showing the point of origin and the destination and the brands on such cattle, horses, or mules being transported.

(g) Any registered purebred beef or dairy cattle being transported to or from the national western stock show or the Colorado state fair, if such beef or dairy cattle are accompanied by registration papers identifying the legal owner;

(h) (Deleted by amendment, L. 92, p. 161, § 1, effective April 2, 1992.)

(i) Any cattle, horses, or mules which are used in rodeo competition within the state of Colorado and which are branded with the owner's state-recorded ownership brand, together with a contest number identification brand, when being transported between rodeos within the state of Colorado, but only if the same have first been inspected by an authorized brand inspector and the fees therefor paid at the beginning of the rodeo season before the cattle, horses, or mules have been moved from the owner's headquarters unless circumstances arise which will justify an inspection for brands by an authorized Colorado brand inspector. Inspection by an authorized brand inspector and collection of the brand inspection fee shall be required prior to any change of ownership or other disposal of such cattle, horses, or mules. In addition, any cattle, horses, or mules purchased for use in rodeo competition shall be inspected by a Colorado brand inspector and a Colorado brand certificate issued before any such livestock is branded with the rodeo stock owner's state-recorded ownership brand. The exemption granted by this paragraph (i) shall not apply to any cattle, horses, or mules used in rodeo competition for which the requirements of this paragraph (i) have not been met.

(5) Nothing in this section shall be construed to prevent an authorized Colorado brand inspector from investigating and inspecting any cattle, horses, or mules being driven or transported in this state to determine if the requirements of this section have been met. If no violations have occurred, no official inspection shall be deemed to have been made nor shall any brand inspection fee be charged. If any violation is found, the brand inspector may require an official inspection of such livestock and collect the fee therefor, or may seek prosecution of the offender pursuant to section 35-53-112, or both.

Source: L. 03: p. 440, § 19. L. 07: p. 592, § 2. R.S. 08: § 6409. L. 21: p. 749, § 1. C.L. § 3211. L. 27: p. 667, § 4. CSA: C. 160, § 128. L. 51: p. 785, § 2. L. 53: p. 584,

§ 3. **CRS 53:** § 8-3-6. **C.R.S. 1963:** § 8-3-5. **L. 65:** p. 226, §§ 1, 2. **L. 67:** pp. 232, 233, §§ 1-3. **L. 84:** (5) amended, p. 944, § 2, effective March 26. **L. 89:** (4)(f) amended, p. 1405, § 4, effective May 16. **L. 92:** (4) amended, p. 161, § 1, effective April 2.

35-53-106. Substitution of animals - penalty. Any person, firm, association, or corporation, or any agent or employee thereof, who ships any animals other than those described in the certificate provided by the brand inspector inspecting such animals, as provided in section 35-53-105, or who removes any of said animals and substitutes others therefor without the knowledge of said inspector is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: **L. 03:** p. 441, § 20. **R.S. 08:** § 6411. **C.L.** § 3213. **CSA:** C. 160, § 130. **CRS 53:** § 8-3-7. **C.R.S. 1963:** § 8-3-6.

35-53-107. Disposition of stock taken by officer. In making any inspection of any animals prior to shipment by rail, truck, or other conveyance or removal from the state, if any inspector finds any animals bearing marks and brands other than those of the owner of the other cattle in said shipment and if said owner or shipper fails to exhibit a bill of sale or other authority for the possession of said animals in said shipment, the inspector shall forthwith declare them to be estrays and shall take possession of the same for the state board of stock inspection commissioners and dispose of the same according to the rules and regulations prescribed by said board.

Source: **L. 03:** p. 442, § 24. **R.S. 08:** § 6415. **C.L.** § 3217. **L. 27:** p. 670, § 7. **CSA:** C. 160, § 134. **CRS 53:** § 8-3-9. **C.R.S. 1963:** § 8-3-7.

ANNOTATION

Section's purpose to protect cattlemen. In passing this and the following sections, the general assembly intended to protect the cattleman	against loss of his cattle by wandering or theft. <i>Alfred v. Esser</i> , 91 Colo. 466, 15 P.2d 714 (1932).
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35-53-108. Disposition of estrays. The state board of stock inspection commissioners is empowered to make such reasonable rules and regulations regarding the disposition of estrays taken up by inspectors, as provided in section 35-53-107, as may seem to said board to be proper and just and for the best interests of the owners of same.

Source: **L. 03:** p. 443, § 25. **R.S. 08:** § 6416. **C.L.** § 3218. **CSA:** C. 160, § 135. **CRS 53:** § 8-3-10. **C.R.S. 1963:** § 8-3-8.

Cross references: For rule-making procedures, see article 4 of title 24; for disposition of estrays generally, see article 44 of this title; for powers of municipalities to restrain and impound estrays, see § 31-15-401 (1)(m).

35-53-109. Amount received paid to owner. Any person, association, or corporation establishing to the satisfaction of the state board of stock inspection commissioners the ownership of any stray animals which have been sold by said board, and the amount realized from such sale deposited in the stray fund, as provided in section 35-41-102, shall be forthwith paid the amount for which said animals were sold.

Source: **L. 03:** p. 443, § 27. **R.S. 08:** § 6418. **L. 09:** p. 508, § 1. **C.L.** § 3220. **CSA:** C. 160, § 137. **CRS 53:** § 8-3-11. **C.R.S. 1963:** § 8-3-9.

ANNOTATION

Owner may bring action upon refusal of reimbursement. The mandate to forthwith reimburse the owner must necessarily include a reciprocal right to maintain an action against the

members of the board in the event of a refusal to comply with the demand for reimbursement. *Alfred v. Esser*, 91 Colo. 466, 15 P.2d 714 (1932).

35-53-110. Proceeds claimed within three years. All moneys in the estray fund, derived from the sale of estray animals by the state board of stock inspection commissioners or any inspector acting under the authority of said board, which has been in the possession of said board of stock inspection commissioners for six years or longer from the date of sale of such estray animals and for which no valid claim has been made shall be turned into the brand inspection fund of said board, and all claims for moneys from the estray fund made by the owners of cattle sold as estrays by said board shall be made within three years from the date of sale of the same or the same shall be forever barred and no moneys shall be paid upon claims made after three years from date of such sale. The funds so transferred from the estray fund may be used by the said board, under proper vouchers, for the prosecution of persons charged with theft of livestock and for general expenses of the board.

Source: L. 03: p. 443, § 28. R.S. 08: § 6419. C.L. § 3221. CSA: C. 160, § 138. CRS 53: § 8-3-12. C.R.S. 1963: § 8-3-10.

Cross references: For the estray fund and the brand inspection fund, see § 35-41-102; for theft generally, see § 18-4-401; for theft of livestock, see §§ 35-43-128 and 35-54-105.

ANNOTATION

Section not bar to recovery if no notice given to owner. Where an owner had no notice of a sale until seven years thereafter, and brought an action upon learning of the sale,

recovery must be allowed, as some sort of notice must be given the owner of cattle held as estrays. *Alfred v. Esser*, 91 Colo. 466, 15 P.2d 714 (1932).

35-53-111. Sanitary rules as to movement of livestock - quarantine - penalty.
 (1) The state agricultural commission may make and adopt such quarantine and sanitary regulations affecting the movement of livestock into and out of the state of Colorado and within the borders of said state as may from time to time be necessary to prevent the introduction into the state or the spread within the state of any contagious or infectious disease, and the expense of such quarantine measures and the carrying out of such regulations shall be made by the imposition of a fee of three cents per head on all cattle and horses and one and one-half cents per head on all sheep entering the state of Colorado from any quarantine or infected territory. Whenever the state agricultural commission knows or has good reason to believe that any contagious or infectious disease exists in any locality in any other state, territory, or country or that there are conditions which render domestic animals from such infected district liable to bring such disease into this state, it may report the same to the governor of the state of Colorado whereupon, by proclamation, he shall prohibit the importation of any such livestock into this state, unless accompanied by a certificate of health given by the state veterinarian or sanitary inspectors appointed by the state agricultural commission, which veterinarian or sanitary inspectors shall carefully examine all such livestock previous to the giving of such certificate.

(2) All fees connected with such examinations are to be paid by the owner of such stock so examined; but no fee shall be collected from the owner of any animals entering this state by railroad, in direct route to other states or territories, which do not remain in the state of Colorado for a longer period than is required for feeding and watering in transit. Any person, firm, or corporation who violates or disregards any of the provisions of a proclamation issued by the governor in compliance with this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than three thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(3) Notwithstanding the amount specified for any fee in subsection (1) of this section, the state agricultural commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state agricultural commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 03: p. 437, § 10. R.S. 08: § 6397. L. 21: p. 753, § 1. C.L. § 3180. CSA: C. 160, § 83. CRS 53: § 8-3-25. L. 63: p. 287, § 1. C.R.S. 1963: § 8-3-11. L. 98: (3) added, p. 1342, § 67, effective June 1.

Cross references: For quarantine procedures to prevent the spread of infectious or contagious diseases among the domestic animals within the state, see §§ 35-50-111 to 35-50-115.

35-53-112. Shipping prior to inspection - penalty. (1) Any person, firm, association, partnership, or corporation, or any employee thereof, who willfully violates any provision of sections 35-53-101 to 35-53-112, except as otherwise provided in said sections, or who moves or causes to be moved any single head or any herd of cattle, horses, or mules within this state or beyond the boundaries of this state without having had the same inspected and cleared by a Colorado brand inspector is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. Upon conviction of a second violation of this section, such person shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the county jail for not less than ninety days nor more than one year. Neither such fine nor imprisonment shall be suspended by the court, nor shall such person be granted probation by the court. Any person who commits a third or subsequent violation of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Nothing in sections 35-53-101 to 35-53-112 shall be construed as repealing the laws now in force respecting the theft of livestock.

(2) It is the duty of the district attorney of the judicial district in this state in which any such violation occurs to initiate criminal proceedings and prosecute the same to effectively enforce the provisions of this section.

Source: L. 03: p. 442, § 23. R.S. 08: § 6414. C.L. § 3216. L. 27: p. 669, § 6. CSA: C. 160, § 133. CRS 53: § 8-3-8. L. 63: p. 187, § 1. C.R.S. 1963: § 8-3-12. L. 67: p. 186, § 1. L. 77: (1) amended, p. 883, § 62, effective July 1, 1979. L. 89: (1) amended, p. 849, § 129, effective July 1. L. 2002: (1) amended, p. 1550, § 325, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: (1) For theft generally, see § 18-4-401; for theft of livestock, see §§ 35-43-128 and 35-54-105.

(2) For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-53-113. Definitions. As used in sections 35-53-113 to 35-53-119, unless the context otherwise requires:

(1) "Carcasses" means one or more animal bodies or parts thereof, but not less than one quarter of an animal body.

Source: L. 31: p. 766, § 9. CSA: C. 160, § 49. CRS 53: § 8-3-19. L. 63: p. 187, § 2. C.R.S. 1963: § 8-3-19.

35-53-114. Inspector may refuse certificate. If any duly authorized inspector finds any livestock, or the carcasses thereof, in the possession of any person, firm, or corporation desiring to transport the same by motor or other vehicle and said person, firm, or corporation in charge of said livestock, or the carcasses thereof, is not in possession of a bill of sale duly executed or cannot furnish other satisfactory proof that said person, firm, or corporation is the lawful owner of said livestock, or the carcasses thereof, or if said inspector has good reason to believe that said livestock, or said carcasses, or any of them, are stolen, said inspector shall refuse to issue the certificate authorized in section 35-53-102 authorizing the transportation of said livestock, or the carcasses thereof, by motor or other vehicle and shall take possession of the same.

Source: L. 31: p. 763, § 2. **CSA:** C. 160, § 42. **CRS 53:** § 8-3-4. **C.R.S. 1963:** § 8-3-13.

35-53-115. Inspection and transportation of hides - fee - records. (1) It is unlawful for any person, firm, corporation, railroad company, or other common carrier to transport or cause to be transported within this state or beyond the limits of this state any hides that have not been inspected and tagged by a duly authorized brand inspector of the state board of stock inspection commissioners for the district in which such hides are shipped. A certificate of inspection as provided for in section 35-53-102 shall accompany all shipments and shall be exhibited by the carrier or his or her agent at any time upon demand of any inspector or peace officer. For each hide thus inspected there shall be paid by the owner or holder thereof a fee in the amount prescribed by the board, pursuant to section 35-41-104, to the inspector before he or she issues the hide inspection certificate authorizing the transportation of such hides.

(2) Each inspector of hides shall keep a complete record of all inspections made by such inspector and shall forward to the state board of stock inspection commissioners, together with the fee collected, on blanks furnished for that purpose, a complete report of each inspection, giving the names of the purchasers and shippers of the hides, as well as all of the brands thereon. Said report and fee so collected shall be reported and transmitted to said board at such time and in such manner as the board shall by regulation require, and said report shall be preserved by the brand commissioner as part of the records of such commissioner's office. This section shall not apply to slaughter plants or packinghouses where all cattle are inspected immediately prior to slaughter by a duly authorized brand inspector of the state board of stock inspection commissioners.

Source: L. 31: p. 766, § 8. **CSA:** C. 160, § 48. **L. 53:** p. 594, § 2. **CRS 53:** § 8-3-13. **C.R.S. 1963:** § 8-3-14. **L. 65:** p. 224, § 2. **L. 77:** (2) amended, p. 1616, § 1, effective May 18. **L. 81:** (1) amended, p. 1710, § 4, effective July 1. **L. 98:** Entire section amended, p. 273, § 9, effective August 5.

35-53-116. Hides inspected - fee - seizure. (1) In the event any authorized brand inspector is making an inspection of hides or the inspection of any slaughtered carcasses, the hides from all such carcasses shall be exhibited to the inspector at the time of the inspection, and if the inspector is satisfied that the person, firm, or corporation is acting within the law, the inspector, in addition to furnishing the certificate, shall tag or mark the carcasses and hides in a manner to be designated by the state board of stock inspection commissioners as evidence that the same have been inspected. In any case where the inspector has reason to doubt the ownership of any carcass or of any hide, he shall refuse to write the hide inspection certificate and shall be authorized to seize any such hide or any such carcass of beef and hold the same for proper proof of ownership and to dispose of the same as provided in sections 35-53-118 and 35-53-119.

(2) In the event that any authorized brand inspector is making any inspection of hides received at any hide house, the owner or person in charge of such hide house shall exhibit any hides in his possession and shall show proof of ownership evidenced by proper bill of sale showing the brand, if any, on the hide or by a brand inspection certificate issued by a

brand inspector in the district at the point of origin of the hide. The inspector is authorized to seize and impound any hides in the possession of any hide house that are not properly cleared for ownership by a valid bill of sale or brand inspection certificate and to dispose of the same as provided by law for the disposal of estrays.

Source: L. 31: p. 764, § 3. CSA: C. 160, § 43. L. 53: p. 593, § 1. CRS 53: § 8-3-14. C.R.S. 1963: § 8-3-15.

Cross references: For disposition of estrays, see article 44 of this title.

35-53-117. Officer may inspect vehicle. Any duly authorized inspector, sheriff, deputy sheriff, or peace officer is authorized to stop and inspect any motor or other vehicle transporting or containing livestock, or the carcasses thereof, and demand from the person operating said motor or other vehicle the exhibition of a bill of sale, permit, or certificate. If any person who transports or who has in possession said livestock, or the carcasses thereof, is unable to exhibit to such inspector or peace officer said bill of sale, permit, or certificate, said inspector or peace officer is empowered to arrest, with or without warrant, any such person operating said motor or other vehicle, to take possession of the same and the livestock, or carcasses therein, and to retain such possession until the person operating such motor or other vehicle can produce satisfactory evidence that he, or the person, firm, or corporation for whom the same is being transported, is the lawful owner thereof or until such livestock, or the carcasses thereof, are disposed of as provided in sections 35-53-118 and 35-53-119.

Source: L. 31: p. 764, § 4. CSA: C. 160, § 44. CRS 53: § 8-3-15. C.R.S. 1963: § 8-3-16.

35-53-118. Officer may sell carcasses. If said inspector or peace officer deems it necessary to sell said carcasses so taken to prevent the loss of same by spoiling, he is authorized to do so, retaining the sale price thereof in his possession to be disposed of as provided in section 35-53-119.

Source: L. 31: p. 765, § 5. CSA: C. 160, § 45. CRS 53: § 8-3-16. C.R.S. 1963: § 8-3-17.

35-53-119. Livestock, carcasses, or proceeds of sale. (1) If within a period of ten days the ownership of said livestock or said carcasses is shown and established, said livestock or carcasses or proceeds of sale shall be delivered to the owner. If, however, within such period the ownership of said livestock or carcasses is not shown or established, then the same shall be sold or disposed of under the direction of the said board. Any moneys derived from the sale of said livestock or carcasses shall be placed in the estray fund in charge of the board of stock inspection commissioners as provided by law and shall be subject to the same provisions applicable to said estray fund.

(2) In all such cases the facts concerning the detention and sale of such livestock or carcasses shall be reported to the district attorney of the judicial district wherein such livestock or carcasses were detained and sold.

Source: L. 31: p. 765, § 6. CSA: C. 160, § 46. CRS 53: § 8-3-17. C.R.S. 1963: § 8-3-18.

Cross references: For the estray fund, see § 35-41-102.

35-53-120. Penalty. Any person, whether acting in his own behalf or as agent, servant, officer, or employee of any firm, association, or corporation, who violates any provisions of sections 35-53-113 to 35-53-119 is guilty of a misdemeanor and, upon conviction thereof,

shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, except where otherwise provided in said sections.

Source: L. 31: p. 767, § 10. CSA: C. 160, § 50. CRS 53: § 8-3-20. L. 63: p. 187, § 3. C.R.S. 1963: § 8-3-20.

35-53-121. Owners' transportation permit. It is unlawful for any person to transport or carry live sheep, swine, goats, horses, mules, domestic fowl, or the carcasses thereof upon any public highway of the state of Colorado or over or across any lands of which the one so transporting said animals is not the owner, lessee, or tenant without the written permission of the owner of said livestock or domestic fowl, or the carcasses thereof, for such transportation. Such permit shall contain the name of the owner of said livestock or domestic fowl, ages, sex, and brands thereon, if any, the date of transportation, the points of origin and destination of the shipment, and the person to whom consigned.

Source: L. 31: p. 768, § 1. CSA: C. 160, § 51. CRS 53: § 8-3-21. C.R.S. 1963: § 8-3-21.

35-53-122. Duty to exhibit permit. Any driver or other person in charge or control of any truck, automobile, or other vehicle so transporting or carrying live sheep, swine, goats, horses, mules, domestic fowl, or the carcasses thereof, upon demand of any peace officer of the state of Colorado, shall exhibit to such peace officer his permit to carry said livestock or domestic fowl, or the carcasses thereof, or in lieu of such permit, upon demand of such peace officer, shall make a written statement which shall contain the same information as is specified in section 35-53-121.

Source: L. 31: p. 769, § 2. CSA: C. 160, § 52. CRS 53: § 8-3-22. C.R.S. 1963: § 8-3-22.

35-53-123. Inspection report of officer. Said officer shall make out and sign a complete inspection report showing the date and place of inspection, the number and kind of said livestock, poultry, or the carcasses thereof transported, the person in charge of the truck, automobile, or other vehicle, the license number, if any, of the vehicle, and the facts set forth in the written permit or written statement, which inspection report shall be filed forthwith in the office of the sheriff of the county where it may be examined at all reasonable hours by any person.

Source: L. 31: p. 769, § 4. CSA: C. 160, § 54. CRS 53: § 8-3-23. C.R.S. 1963: § 8-3-23.

35-53-124. Penalty. Any person who makes a false or forged permit as specified in section 35-53-121 or a false or forged statement as specified in section 35-53-122, or who knowingly exhibits or causes to be exhibited to any peace officer any such false or forged permit or statement, or who, upon request of any peace officer of the state of Colorado, refuses or neglects to exhibit a permit or make a statement as provided in section 35-53-122 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 31: p. 770, § 5. CSA: C. 160, § 55. CRS 53: § 8-3-24. C.R.S. 1963: § 8-3-24.

35-53-125. Inspection at point of origin. (1) Any cattle moved from a pasture shall be inspected for brands by an authorized brand inspector at the point of origin before they

are placed in a feed lot, and proof of ownership shall be shown on demand by any Colorado brand inspector or any other interested party. Any cattle found carrying questionable brands when an inspection is made shall be held and handled as estrays or questionably-owned cattle, as provided by law. Such inspections shall be made before mixing with any other cattle, and when any uninspected cattle are mixed prior to an inspection, an inspection shall be made on all the cattle so mixed, and the inspection fee shall be collected. A brand inspector shall be authorized to release the cattle to be inspected at the point of origin for an inspection to be made at any designated place where proper facilities are available.

(2) In the event that two or more parties claim ownership of questionably-owned cattle, the state board of stock inspection commissioners may provide for arbitration of the claim of ownership under the supervision of the said board or under the supervision of such officer or agent of the said board as may be designated by the said board.

Source: L. 53: p. 582, § 1. CRS 53: § 8-3-26. C.R.S. 1963: § 8-3-25. L. 71: p. 164, § 1. L. 98: (1) amended, p. 274, § 10, effective August 5.

35-53-126. Inspection at market - penalty. All cattle that are subject to inspection in the state by virtue of any law or regulation, on arrival at any market, shall be inspected by a duly authorized brand inspector, whether or not they have been previously inspected at the point of origin, before they are taken to the scales for weighing or are weighed at such market unless such cattle are released by an authorized brand inspector. Any person, whether acting in his own behalf or as an agent, servant, officer, or employee of any person, firm, corporation, or association, who violates any provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: L. 53: pp. 580, 581, §§ 2, 1. CRS 53: § 8-3-18. C.R.S. 1963: § 8-3-26.

35-53-127. Brand inspection contracts. The state board of stock inspection commissioners is authorized to enter into contracts or agreements, within the limits of funds available therefor, with any agency, governmental or otherwise, to perform the duties imposed by law upon said state board of stock inspection commissioners with respect to brand inspection. All contracts and brand inspections pursuant to such contracts shall be subject to the approval and control of the state board of stock inspection commissioners.

Source: L. 55: p. 156, § 5. CRS 53: § 8-3-27. C.R.S. 1963: § 8-3-27.

35-53-128. Brand inspectors - powers of arrest. (1) In addition to his other duties, a duly appointed brand inspector is authorized to ride the ranges, pastures, and other localities within the state to protect the livestock industry of the state from depredations and theft.

(2) Brand inspectors in the exercise of their statutory duties are vested with all the powers of arrest, with or without a warrant, conferred upon peace officers as set forth in section 16-3-101, C.R.S.

(3) The state board of stock inspection commissioners may authorize brand inspectors to equip their cars with sirens, red lights, and other devices for use in the apprehension of persons suspected of theft of livestock or violation of stock inspection laws. The board may also authorize the said stock inspectors to carry arms.

Source: L. 63: p. 189, § 1. C.R.S. 1963: § 8-3-28.

Cross references: For use of siren and red light, see §§ 42-4-213 and 42-4-220; for theft generally, see § 18-4-401; for theft of livestock, §§ 35-43-128 and 35-54-105.

35-53-129. Permanent permit for rodeo and other horses - rules. (1) Competition horses, other than contractor-owned bucking horses, that are used in rodeo and horse show

competitions, registered breed show horses, racehorses, special drill and pleasure horses, and Colorado farm or ranch work or saddle horses shall be eligible to receive a permanent transportation permit that shall be valid for both interstate and intrastate movement if positive proof of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the board, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the horse, accompanied by a copy of the brand inspection certificate and a transportation permit fee in an amount determined by the board by rule made payable to the state board of stock inspection commissioners, a permanent hauling transportation permit shall be issued that shall be good for the life of the horse unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A permit issued pursuant to this section shall be in lieu of other permits required under the provisions of this article.

Source: **L. 71:** p. 166, § 1. **C.R.S. 1963:** § 8-3-29. **L. 73:** p. 222, § 1. **L. 81:** Entire section R&RE, p. 1711, § 5, effective July 1. **L. 98:** (1) amended, p. 265, § 5, effective August 5. **L. 2002:** (1) amended, p. 1551, § 326, effective October 1. **L. 2004:** (1) amended, p. 650, § 13, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-53-130. Annual transportation permit for cattle or alternative livestock - rules.

(1) Bovine livestock, as defined in section 35-41-100.3 (1.4), and alternative livestock, as defined in section 35-41.5-102 (1), shall be eligible to receive an annual transportation permit that shall be valid for both interstate and intrastate movement if positive proof of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the state board of stock inspection commissioners, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the animal, accompanied by a copy of the brand inspection certificate and a transportation permit fee in an amount determined by the board by rule made payable to the board, an annual hauling transportation permit shall be issued that shall be good for one year after the date of issuance unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A permit issued pursuant to this section shall be in lieu of other permits required under the provisions of this article.

Source: **L. 98:** Entire section added, p. 266, § 6, effective August 5. **L. 2002:** (1) amended, p. 1551, § 327, effective October 1. **L. 2004:** (1) amended, p. 650, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

35-53-131. Sheep inspection districts. (1) The board of county commissioners of any county, upon petition of at least fifty-one percent of the sheep growers of the county, shall request the board to designate such county as a sheep inspection district. The board

shall duly authorize a brand inspector to inspect sheep moving from range to range, or any migratory movement of sheep, through such counties.

(2) The authorized brand inspector shall inspect such transitory sheep for a brand or earmarks, and the owner of sheep so inspected shall be given an inspection certificate stating the time and place of inspection.

(3) Any sheep owner in a county designated as a sheep inspection district shall notify the board, or its duly authorized inspector, seven days in advance of any movement of sheep from one range to another. Such inspector shall then designate a corral, convenient to the route to be taken by such band of sheep, where inspection shall be made.

Source: L. 2005: Entire section added, p. 461, § 2, effective December 1.

Editor’s note: This section is similar to former § 35-50-105 as it existed prior to 2005.

35-53-132. Failure to give notice. Any owner or foreman who segregates, forms flocks of, transports, or drives any sheep from authorized inspection districts without giving due notice to an authorized inspector as required by section 35-53-131 (3) commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 2005: Entire section added, p. 461, § 2, effective December 1.

Editor’s note: This section is similar to former § 35-50-106 as it existed prior to 2005.

35-53-133. Inspection fee - range movements. (1) In addition to the moneys now provided by law to provide the board with sufficient moneys with which to meet and defray expenses, it is the duty of brand inspectors appointed by the board to collect a fee, in an amount determined by the board by rule, on each sheep inspected in sheep inspection districts. The fee collected shall be reported and transmitted to the board, at such time and in such way as the board’s rules may require.

(2) Whenever fifty-one percent of the holders of sheep permits on public lands petition the state board of stock inspection commissioners to make inspection of sheep using such public lands, the board shall authorize an inspector of the board to inspect sheep on range-to-range movements for brands or earmarks. Any owner of sheep using such public lands shall notify the board seven days in advance of such intended movement of sheep, and such inspector shall designate the most convenient available corral on the route taken by such transitory bands.

Source: L. 2005: Entire section added, p. 461, § 2, effective December 1.

Editor’s note: This section is similar to former § 35-50-107 as it existed prior to 2005.

ARTICLE 53.5

Feedlot Certification

35-53.5-101.	Short title.	35-53.5-108.	Movement of cattle from certified feedlots - notice - inspection.
35-53.5-102.	Definitions.		
35-53.5-103.	Rules.	35-53.5-109.	Movement of cattle into certified feedlots - notice - inspection.
35-53.5-104.	Delegation of duties - cooperative agreements.	35-53.5-110.	Audits - inspections - complaints.
35-53.5-105.	Feedlot certification.	35-53.5-111.	Enforcement - hearings.
35-53.5-106.	Application - fees - rules.		
35-53.5-107.	Per-head fees.		

35-53.5-112. Disciplinary actions - suspension or revocation of certificate - grounds.
 35-53.5-113. Civil penalties.

35-53.5-114. Estrays - stolen livestock - board to assist recovery.
 35-53.5-115. Prohibited acts - no liability of state.

35-53.5-101. Short title. This article shall be known and may be cited as the “Feedlot Certification Act”.

Source: L. 98: Entire article added, p. 267, § 7, effective August 5.

35-53.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Board” means the state board of stock inspection commissioners created in section 35-41-101 (1).

(2) “Brand commissioner” means the brand commissioner appointed by the board pursuant to section 35-41-101 (2).

(3) “Brand inspector” means an authorized Colorado brand inspector.

(4) “Commissioner” means the commissioner of agriculture.

(5) “Department” means the department of agriculture.

(6) “Feedlot” has the meaning set forth in section 35-41-100.3 (2).

Source: L. 98: Entire article added, p. 267, § 7, effective August 5.

35-53.5-103. Rules. (1) To carry out the provisions of this article, the board is authorized to adopt appropriate rules pursuant to section 24-4-103, C.R.S., on subjects that shall include, but are not limited to, the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article;

(b) Methods of separating cattle for purposes of this article;

(c) Standards and procedures for certification of feedlots and for the issuance, renewal, suspension, revocation, and reinstatement of certificates;

(d) The number and type of on-site inspections;

(e) Records to be maintained by the owners and operators of certified feedlots;

(f) Grounds for enforcement actions.

Source: L. 98: Entire article added, p. 267, § 7, effective August 5.

35-53.5-104. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the board by this article may be delegated to qualified employees and agents, including without limitation the brand commissioner and brand inspectors.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions.

Source: L. 98: Entire article added, p. 267, § 7, effective August 5.

35-53.5-105. Feedlot certification. (1) Any person desiring to have a feedlot certified and utilize the certification seal under the provisions of this article shall secure such certification from the board in accordance with this article and any rules promulgated pursuant to this article. The certification period shall be one year, beginning July 1 and ending June 30 of each year.

(2) (a) Feedlots separated by at least one mile will be treated as separate facilities, even if they are owned by the same entity. Feedlots owned by the same entity and not separated by at least one mile will be considered one facility for purposes of certification under this article. Each facility shall be certified individually.

(b) To be eligible for certification, each facility must be organized and operated primarily for the finishing of terminal slaughter cattle. No animal interdiction or commingling of animals from any other facility shall be permitted.

(c) Animals shall not be marketed as finished in a certified feedlot unless the owner of the feedlot verifies that the animals are destined to a packing facility registered and licensed by the United States department of agriculture. Animals leaving a certified feedlot for any other destination or purpose shall not be marketed as finished in a certified feedlot and shall be subject to all otherwise applicable brand inspection requirements.

(3) Certifications are not transferable.

(4) Certified feedlots shall be exempt from the fee waiver permit provisions of section 35-53-101 (2).

(5) Animals in a certified feedlot shall not be exempt from any Colorado brand inspection requirement other than those exemptions contained in this article.

Source: L. 98: Entire article added, p. 268, § 7, effective August 5.

35-53.5-106. Application - fees - rules. (1) Each person seeking certification of a feedlot shall make application to the board on forms prescribed and furnished by the board. The board may reject any applicant who does not meet the minimum requirements for certification as set forth in rules of the board.

(2) An annual certification fee in an amount determined by the board by rule shall accompany the application.

Source: L. 98: Entire article added, p. 268, § 7, effective August 5. **L. 2004:** (2) amended, p. 651, § 15, effective July 1.

35-53.5-107. Per-head fees. (1) The per-head inspection fee for a certified feedlot shall be fifteen cents less than the fee set by the board pursuant to section 35-41-104 for direct-to-slaughter cattle and seventeen cents less than such fee for all other cattle. All such fees shall be due and payable to the board by the fifth day of each month based on the number of animals shipped during the previous calendar month.

(2) Each month, the owner of a certified feedlot shall remit two separate checks, each made payable to the board. One of such checks shall be in the amount of the per-head fee specified in subsection (1) of this section, and the other in the amount required to cover the Colorado beef board fee, the national beef promotion fee assessed pursuant to 7 CFR 1260.172, or both. Any payment received over ten days late shall result in the assessment of a penalty of ten percent of the amount originally due, not to exceed fifty dollars per late payment, plus interest at the legal rate specified in section 5-12-102 (1) (b), C.R.S., until paid.

Source: L. 98: Entire article added, p. 268, § 7, effective August 5.

35-53.5-108. Movement of cattle from certified feedlots - notice - inspection. (1) The board shall supply each certified feedlot with appropriate movement certificates in triplicate. One copy of each certificate shall accompany the slaughter animals to the packing facility, one copy shall be retained by the certified feedlot, and one copy shall be sent to the board together with the appropriate fees. The feedlot shall retain copies of the direct-to-slaughter certificates in a separate file, in numeric order, for audit purposes.

(2) All certified feedlots shall notify the local brand inspector of all anticipated shipments going directly to slaughter, giving the inspector ample notice to inspect or audit the shipment at his or her discretion during daylight hours.

(3) Any certified feedlot that has animals inspected immediately prior to shipment to slaughter and an inspection certificate issued by an authorized Colorado inspector shall be charged the applicable per-head fees, Colorado beef board fees, and national beef promotion fees. The certified feedlot per-head fee will not be charged in addition to the inspection fee.

One copy of the inspection certificate shall be filed with feedlot copies of the slaughter movement certificates. The feedlot shall be responsible for the inspection fee, which shall be payable at the time of inspection on all animals inspected.

Source: L. 98: Entire article added, p. 269, § 7, effective August 5.

35-53.5-109. Movement of cattle into certified feedlots - notice - inspection.

(1) (a) All Colorado cattle arriving at a certified feedlot from origins in Colorado shall be accompanied by an inspection certificate or Colorado licensed market invoice, issued immediately prior to entry, or shall be inspected upon entry to the certified feedlot. All Colorado cattle that are inspected at the feedlot prior to entry for change of ownership or feedlot entry and that are not accompanied by a Colorado inspection certificate or purchase invoice shall be charged the regular set fees as authorized by section 35-41-104 and shall not be entitled to the discount provided in section 35-53.5-107 (1).

(b) As used in this section, "Colorado cattle" means cattle that either were born in Colorado or were unloaded in Colorado before entering the feedlot.

(2) Cattle received from another brand inspection state or province and accompanied by a current inspection certificate or licensed public livestock market purchase invoice issued immediately prior to shipment that identifies the animals by brand and that identifies the certified feedlot as the final destination shall be exempt from inspection requirements.

(3) All cattle originating from a non-brand inspection area shall be accompanied by purchase and interstate shipment documentation as required by Colorado or the state of origin of the cattle, or both. The document shall include buyer, seller, date of purchase, number of head, sex, average weight, and brands if known. The feedlot shall notify the local brand inspector within twenty-four hours after arrival, and the cattle shall be held separately by source for a maximum of forty-eight hours after such notification so that the inspector may inspect or audit-endorse purchase and shipment documentation so as to establish identity satisfactory to the inspector. No commingling of shipments shall be allowed prior to inspection. The local brand inspector shall not collect any fee for this service.

(4) Cattle received at the feedlot from any source that are rejected by the feedlot for any reason may be shipped out after proper required inspection. Cattle so rejected shall be considered Colorado cattle. These animals shall be kept totally separate from other animals, and no commingling shall be allowed.

(5) The owner of each certified feedlot shall be required to keep a formal, auditable entry log of all cattle entering the facility. This log shall contain information including, but not limited to, the legal owner of the cattle, date of entry, number of head, sex, and lot number or numbers assigned. In addition, the log shall show the brand inspection or purchase invoice that accompanied the livestock upon entry. Such log shall be for the private use of the feedlot and the brand inspector and shall not be considered a public record under the Colorado open records law, article 72 of title 24, C.R.S. The log shall be kept at the certified feedlot at all times.

Source: L. 98: Entire article added, p. 269, § 7, effective August 5.

35-53.5-110. Audits - inspections - complaints. (1) The board or an authorized brand inspector may audit a certified feedlot at any reasonable time, with or without advance notice, to ensure compliance with this article or any rules adopted under the authority granted in this article.

(2) (a) The board shall determine the depth and frequency of any feedlot audit.

(b) The audit of a certified feedlot may include physical inspection of animals in any area of the facility and may include any document required to verify head count, valid ownership, or legal entry into the facility.

(3) (a) Any person having reasonable suspicion of a potential violation may request, directly to the brand commissioner or his or her designated agent, an inspection or audit of a specific certified feedlot or pen therein. Such request may be granted or denied based upon rules of the board governing such inspection or audit. The person requesting such audit shall

be responsible for the board's fees and costs incurred in conducting the inspection or audit; except that, if any violations are proven as a result of the inspection or audit, such person shall be reimbursed from the penalties assessed pursuant to section 35-53.5-113.

(b) The owner of a certified feedlot may request an inspection of cattle held at the feedlot upon payment to the board of all applicable fees.

Source: L. 98: Entire article added, p. 270, § 7, effective August 5.

35-53.5-111. Enforcement - hearings. (1) The board is authorized to administer and enforce the provisions of this article and all rules adopted pursuant thereto.

(2) The board is authorized to conduct hearings in accordance with article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the board.

(3) The board and, in the exercise of delegated authority, the brand commissioner, shall have full authority to administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of books, records, and other documentary evidence, and compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey a subpoena, the board or the brand commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: L. 98: Entire article added, p. 271, § 7, effective August 5.

35-53.5-112. Disciplinary actions - suspension or revocation of certificate - grounds. (1) The board, acting in accordance with article 4 of title 24, C.R.S., may deny, suspend, refuse to renew, or revoke any certification if the applicant or certificate holder has violated any provision of article 43, 44, 53, or 54 of this title or has entered a plea of guilty or nolo contendere to or been convicted of any criminal act under title 18, C.R.S.

(2) The owner of any feedlot whose certification has been suspended or revoked shall, upon notice, cause all animals leaving the facility to be inspected pursuant to section 35-53-105 and shall pay all required inspection fees at the time of inspection.

(3) Upon the suspension or revocation of a certificate, all or part of the annual certification fee may be forfeited as determined by the board.

(4) The owner of a feedlot whose certification has been revoked may reapply for certification at any time after the expiration of two years from the date of revocation and upon the payment of all required fees.

Source: L. 98: Entire article added, p. 271, § 7, effective August 5.

35-53.5-113. Civil penalties. (1) (a) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty, not to exceed one thousand dollars per violation, as determined by the board or a court of competent jurisdiction.

(b) No civil penalty shall be imposed by the board unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) All civil penalties levied and collected pursuant to this article shall be credited to the brand inspection fund created in section 35-41-102. All moneys credited to such fund pursuant to this article, together with any interest earned thereon, shall be retained in the fund and shall not revert to the general fund or any other fund except as may be directed by the general assembly, acting by bill.

(2) Nothing in this article shall be construed to limit the authority of the board or any other law enforcement agency to investigate or prosecute violations of local, state, or federal law except as otherwise specifically provided.

(3) Nothing in this article shall be construed to immunize any person from civil liability.

Source: L. 98: Entire article added, p. 272, § 7, effective August 5.

35-53.5-114. Estrays - stolen livestock - board to assist recovery. (1) The board shall assist the owner of any certified feedlot that, as legal purchaser, has inadvertently received an estray or stolen animal on any shipment received. Stolen livestock found at any inspection location shall be handled in accordance with section 18-4-405, C.R.S.

(2) Animals found to be of questionable title shall be handled as estrays until clear and legal title has been established. At the time of entry into a certified feedlot, the officiating inspector shall notify the owner of the feedlot of any estrays or animals of questionable title and assist in clarifying title wherever possible.

Source: L. 98: Entire article added, p. 272, § 7, effective August 5.

35-53.5-115. Prohibited acts - no liability of state. (1) It shall be unlawful for any unauthorized person to reproduce, produce a facsimile of, or use a feedlot certificate in any fashion. Any person who violates this subsection (1) may be subject to appropriate civil or administrative proceedings or both.

(2) The state assumes no liability for persons who misrepresent any product under the authority of this article.

Source: L. 98: Entire article added, p. 273, § 7, effective August 5.

ARTICLE 54

Sale of Stock

35-54-101.	Bills of sale given for live-stock sold.	35-54-105.	sale. Selling without bill of sale -
35-54-102.	Penalty.		theft.
35-54-103.	Requirements of bill of sale.	35-54-106:	Partido contracts recorded.
35-54-104.	Purchaser must show bill of		

35-54-101. Bills of sale given for livestock sold. No person, whether as principal or agent, shall sell or otherwise dispose of any livestock, nor shall any person, whether as principal or agent, buy, purchase, or otherwise receive any such livestock, unless the person so selling or disposing of any such livestock gives, and the person buying, purchasing, or otherwise receiving any such livestock takes, a bill of sale, in writing, of the livestock so sold or disposed of, or so bought, purchased, or otherwise received.

Source: G.L. § 2594. G.S. § 3186. R.S. 08: § 6447. C.L. § 3271. CSA: C. 160, § 201. CRS 53: § 8-10-1. C.R.S. 1963: § 8-10-1. L. 67: p. 255, § 1.

ANNOTATION

Law governing passage of title. The live-stock bill of sale laws are not superseded by the uniform commercial code, and passage of title to livestock in Colorado is accomplished by compliance with this article. When neither party complies with the livestock bill of sale laws, however, the law merchant, as embodied in the UCC provisions governing passage of title, ap-

plies. *Rochester Ranch Co. v. Stubblefield*, 640 P.2d 267 (Colo. App. 1981); *Cugini v. Reynolds Cattle Co.*, 648 P.2d 159 (Colo. App. 1981), *aff'd*, 687 P.2d 962 (Colo. 1984).

Applied in *Ranchers & Farmers Livestock Auction Co. v. Honey*, 38 Colo. App. 69, 552 P.2d 313 (1976).

35-54-102. Penalty. Any person who violates or fails to comply with any of the provisions of section 35-54-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Source: G.L. § 2595. G.S. § 3187. R.S. 08: § 6448. C.L. § 3272. CSA: C. 160, § 202. CRS 53: § 8-10-2. C.R.S. 1963: § 8-10-2.

ANNOTATION

Applied in *Cugnini v. Reynolds Cattle Co.*, 648 P.2d 159 (Colo. App. 1981), *aff'd*, 687 P.2d 962 (Colo. 1984).

35-54-103. Requirements of bill of sale. (1) A duly executed bill of sale is an instrument in writing by which the legal owner or authorized agent transfers to the buyer the title of livestock therein described and guarantees to defend said title against all lawful claims. It shall definitely describe the animal sold as follows:

(a) Horses or mules, age, color, and sex, with special markings, including all iron brands carried;

(b) Registered cattle, registration number tattooed in ear, name, sex, breed, brand, and marks, if any;

(c) Range cattle, sex, age, breed, brands or earmarks, wattle or dewlap, horned or dehorned;

(d) When the sale or transfer involves neat cattle carrying one or more Colorado recorded brands, the cattle shall be tallied for brands, and the brands described in the bill of sale, giving location on the animal of all Colorado recorded brands;

(e) Sheep, number, breed class, ewes, rams, wethers, lambs, paint brands, firebrands, and earmarks.

(2) Both the seller and the buyer shall sign the bill of sale, giving the post-office address of each, in the presence of a witness, who also signs with his name and address, and who is a legal resident of the county where the transfer of the described livestock takes place. The bill of sale shall be dated the day of the transaction.

Source: L. 41: p. 740, § 1. CSA: C. 160, § 204(1). CRS 53: § 8-10-5. C.R.S. 1963: § 8-10-5. L. 67: p. 256, § 4.

ANNOTATION

Where purchaser does not comply with livestock bill of sale requirements, title does not pass. *Cugnini v. Reynolds Cattle Co.*, 648 P.2d 159 (Colo. App. 1981), *aff'd*, 687 P.2d 962 (Colo. 1984).

Application of UCC provisions to aspects of a livestock transaction, other than passage of

title, is not inconsistent with the additional requirements of compliance with the livestock bill of sale laws. *Cugnini v. Reynolds Cattle Co.*, 648 P.2d 159 (Colo. App. 1981), *aff'd*, 687 P.2d 962 (Colo. 1984).

35-54-104. Purchaser must show bill of sale. It is the duty of any person who purchases or receives, or has in his possession, any such livestock, either for himself or for another, to exhibit, on reasonable request to any person inquiring therefor, the bill of sale of such livestock, if in his power to do so, and if not in his power to do so, to state and give the reason therefor. Any person violating or failing to comply with the provisions of this section shall be deemed guilty and liable to punishment as provided in section 35-54-102.

Source: G.L. § 2596. G.S. § 3188. R.S. 08: § 6449. C.L. § 3273. CSA: C. 160, § 203. CRS 53: § 8-10-3. C.R.S. 1963: § 8-10-3. L. 67: p. 255, § 2.

35-54-105. Selling without bill of sale - theft. (1) Any person who sells or offers for sale or trades any livestock upon which such person has not his recorded mark or brand, or for which the person so offering has neither bill of sale nor power of attorney from the owner of such livestock authorizing such sale, is guilty of theft, unless such person upon trial shall establish and prove that he was at the time the actual owner of the livestock so sold or traded, or offered for sale or trade, or that he acted by the direction of one proven to be the actual owner of such livestock.

(2) In prosecutions for a violation of this section, it shall not be necessary, in order to warrant a conviction for the people, to prove motive, intent, or purpose on the part of the accused, or that the accused knew that the livestock sold or traded, or offered for sale or trade, was so sold, traded, or offered in violation of this section, but the fact of such selling, trading, or offering for sale or trade contrary to the provisions of this section, when proved, shall be sufficient to authorize a conviction, unless the accused shall by testimony explain the case made by the people in a manner consistent with good faith and an innocent purpose.

Source: G.L. § 2600. G.S. § 3192. R.S. 08: § 6450. C.L. § 3274. CSA: C. 160, § 204. CRS 53: § 8-10-4. C.R.S. 1963: § 8-10-4. L. 67: pp. 255, 574, §§ 3, 3.

Cross references: For theft generally, see § 18-4-401; for additional provisions concerning theft of livestock, see § 35-43-128.

35-54-106. Partido contracts recorded. No partido or share contract, whereby live-stock is delivered to be kept on shares for a period of time at the end of which they, or an equal or similar number, or any number thereof, are to be returned, whatever the specific terms of said contract may be, shall be valid, except as between the parties to said contract, unless such contract is filed or recorded in the office of the county clerk and recorder of deeds of the county wherein such livestock is to be kept.

Source: L. 25: p. 492, § 1. CSA: C. 160, § 205. CRS 53: § 8-10-6. C.R.S. 1963: § 8-10-6.

ANNOTATION

Law reviews. For article, "The Perennial Problem of Security Priority and Recordation", see 24 Rocky Mt. L. Rev. 180 (1952). For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965).

This section requires that partido contract be in writing and that it be recorded in the office of the clerk and recorder of the county in which the livestock is to be kept under the agreement. Klutts v. Parker, 158 Colo. 594, 409 P.2d 275 (1965).

Partido contract need not be in any set form and its character is not varied by the fact

that the interest of the one in possession of the livestock is measured in cash: What must be shown is an interest in the property by the one to whom the care of the sheep is entrusted. Clay Robinson & Co. v. Antencio, 74 Colo. 17, 218 P. 906 (1923); First Nat'l Bank v. Matteson, 106 Colo. 233, 103 P.2d 487 (1940); Klutts v. Parker, 158 Colo. 594, 409 P.2d 275 (1965).

For nonexistence of partido contract due to lack of lessee's interest, see First Nat'l. Bank v. Matteson, 106 Colo. 233, 103 P.2d 487 (1940).

ARTICLE 55

Public Livestock Markets

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35-55-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Livestock” means horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock as defined in section 35-41.5-102 (1).

(2) “Public livestock market” means any place, establishment, or facility, commonly known as a livestock market, conducted or operated for compensation or profit as a public livestock market, consisting of pens, or other enclosures, and their appurtenances, in which live horses, mules, cattle, burros, swine, sheep, goats, and poultry are received, held, or assembled for either public or private sale. The person, partnership, or corporation owning or controlling premises defined as a public livestock market shall be compensated for the use of the premises and the services performed in handling the livestock in connection with the sale.

Source: L. 49: p. 698, § 2. CSA: C. 160, § 209(19). CRS 53: § 8-11-2. C.R.S. 1963: § 8-11-2. L. 65: p. 234, § 2. L. 94: (1) amended, p. 1712, § 13, effective July 1.

35-55-102. License requirements. (1) Any person, partnership, or corporation may procure a license to establish and operate, for a term of one year, a public livestock market within the state of Colorado by making written application to the state board of stock inspection commissioners, which application shall provide the following:

(a) The name and address of the applicant, and the names and addresses of all persons having any financial interest in the business;

(b) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(c) A legal description of the property and its exact location, with a complete description of the facilities proposed to be used in connection with such public livestock market;

(d) Repealed.

(e) Proof of the ability of the applicant to comply with the federal “Packers and Stockyards Act, 1921”, as amended (7 U.S.C. sec. 181 et seq.);

(f) Proof of the financial stability, business integrity, and fiduciary responsibility of the applicant.

(2) Each such application shall be accompanied by the annual fee as prescribed in section 35-55-103.

(3) Before an application for license is approved, the applicant shall prove ownership or control by lease of not less than six thousand square feet of holding pens including ample sorting and handling alleys, not less than ten feet wide with at least three gates in each alley that will fasten across the alley; ample pens and sheds for holding and handling sheep and hogs; and at least two adequate-sized pens with connecting alley and usable chute for use by state and federal livestock sanitary inspectors.

(4) Repealed.

(5) Every licensed public livestock market shall use forms approved by the state board of stock inspection commissioners for consignment cards, consignors accounts on sale, buyers settlement sheets, and bills of sale to the purchaser.

(6) A public livestock market shall operate on the day of the week designated by the state board of stock inspection commissioners. The operation of a public livestock market in this state without a license is a misdemeanor punishable as provided in section 35-55-117.

Source: L. 49: p. 697, § 1. CSA: C. 160, § 209(18). CRS 53: § 8-11-1. C.R.S. 1963: § 8-11-1. L. 65: p. 233, § 1. L. 91: IP(1) amended, (1)(d) and (4) repealed, and (1)(e) and (1)(f) added, p. 166, §§ 1, 2, effective July 1. L. 2006: (1)(e) amended, p. 1507, § 57, effective June 1.

ANNOTATION

Law reviews. For article, “One Year Review of Contracts”, see 36 Dicta 19 (1959). For article, “One Year Review of Corporations, Partnership, and Agency”, see 36 Dicta 27 (1959).

Purpose of livestock sales ring statute is the prevention of the spread of infectious and contagious diseases of animals. *Seal v. State Bd. of Stock Inspection Comm’rs*, 114 Colo. 497, 167 P.2d 22 (1946).

To operate livestock sales ring, one must receive sanction of state to do so, and must accept the limitations, duties, and responsibilities which the statutory law imposes. *Weaver v. First Nat’l. Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

35-55-103. License fee - rules. No person shall engage in the operation of a public livestock market within the state of Colorado without first procuring a license from the state board of stock inspection commissioners and paying a fee prescribed by the board in an amount sufficient to cover the administrative costs of the licensing provisions of this article. The license may be renewed by eligible applicants in accordance with an expiration and renewal schedule established in rules promulgated by the commissioner of agriculture. An application for a license to establish and operate public livestock markets shall be in writing upon a blank form to be furnished by the board and shall be accompanied by the fee prescribed by the board pursuant to this section. If the board does not issue a license or renewal, the fee must be returned to the applicant.

Source: **L. 49:** p. 698, § 3. **CSA:** C. 160, § 209(20). **CRS 53:** § 8-11-3. **C.R.S. 1963:** § 8-11-3. **L. 65:** p. 235, § 3. **L. 81:** Entire section amended, p. 1711, § 6, effective July 1. **L. 91:** Entire section amended, p. 167, § 3, effective July 1. **L. 98:** Entire section amended, p. 274, § 11, effective August 5. **L. 2009:** Entire section amended, (SB 09-115), ch. 61, p. 219, § 4, effective July 1.

35-55-104. Bond. (1) No license or renewal of license to establish a public livestock market within the state of Colorado may be issued until the applicant has filed evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or executed and delivered to this state a surety bond approved and accepted by the state board of stock inspection commissioners upon a form prescribed by the state board. The bond shall be in a penal sum of not less than twenty-five thousand dollars, the amount to be determined by the state board based upon the dollar volume of the business, and shall be issued by a surety company approved by the state board of stock inspection commissioners. Said bond shall be conditioned upon the prompt payment to the rightful owner, upon sale of the livestock so consigned and delivered to the licensee for sale, of all moneys received, less reasonable expenses and agreed commissions chargeable by the licensee and operator of the public livestock market, and also upon full compliance with all of the terms and requirements of this article. When so approved, said bond shall be filed with the state board.

(2) Actions at law may be brought in the name of the state board of stock inspection commissioners upon any such bond, for the use and benefit of any person, firm, or corporation who may suffer loss or damage from violations thereof, but the aggregate liability of the surety for all such losses or damages shall, in no event, exceed the sum of said bond.

(3) Any such public livestock market which is registered under the provisions of the federal “Packers and Stockyards Act, 1921”, as amended, and has executed a bond as provided for therein and as is required by the rules and regulations prescribed by the secretary of agriculture, is not required to execute the bond provided for in this article if such bond also guarantees payment of all brand and sanitary inspection fees due this state. Copies of any such license and bond certified by the executive officer of such board may be procured upon payment of a fee of one dollar each, and shall be received as competent evidence in any court in this state.

Source: L. 49: p. 698, § 4. CSA: C. 160, § 209(21). L. 51: p. 787, § 1. CRS 53: § 8-11-4. C.R.S. 1963: § 8-11-4. L. 65: p. 235, § 4. L. 73: p. 1395, § 6. L. 79: (1) amended, p. 426, § 18, effective July 1. L. 98: (3) amended, p. 274, § 12, effective August 5.

Cross references: For the federal “Packers and Stockyards Act, 1921”, and amendments thereto, see 7 U.S.C. §§ 181-231.

35-55-105. Posting licenses. A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor, and the original or certified copy of said license shall be posted during sale periods in a conspicuous place on the premises where the public livestock market is conducted.

Source: L. 49: p. 699, § 5. CSA: C. 160, § 209(22). CRS 53: § 8-11-5. C.R.S. 1963: § 8-11-5. L. 65: p. 236, § 5. L. 98: Entire section amended, p. 275, § 13, effective August 5.

35-55-106. Board rules. The state board of stock inspection commissioners may adopt, publish, and enforce rules and regulations necessary for the administration of this article.

Source: L. 49: p. 699, § 6. CSA: C. 160, § 209(23). CRS 53: § 8-11-6. C.R.S. 1963: § 8-11-6.

Cross references: For rule-making procedures, see article 4 of title 24.

35-55-107. Discipline of licensees. (1) Any violation of the provisions of this article or of any rule adopted and published by the state board of stock inspection commissioners shall be deemed sufficient cause for the state board of stock inspection commissioners to revoke or suspend the license of the offending operator of such public livestock market or to place on probation such licensee, and the following shall also be specific grounds for the imposition of any of the disciplinary actions specified in this introductory portion:

(a) If the state board of stock inspection commissioners finds the licensee has violated any law of the state of Colorado or official rule or regulation made pursuant thereto governing the intrastate or interstate movement, shipment, or transportation of livestock, or the requirements for brand or health inspection thereof;

(b) If the state board of stock inspection commissioners finds that said licensee has been guilty of fraud or misrepresentation as to the title, brands, or ownership;

(c) If the state board of stock inspection commissioners finds the licensee guilty of buying, receiving, or offering for sale any livestock known by him to be diseased or to have been exposed to infectious or contagious disease;

(d) If the state board of stock inspection commissioners finds that the licensee has failed or refused to practice measures of sanitation and inspection as are required by this article or by rule or regulation of the state board of stock inspection commissioners made pursuant thereto concerning premises or vehicles used for the stabling, yarding, housing, holding, or transporting of animals in the operation of his public livestock market;

(e) If the state board of stock inspection commissioners finds that the licensee has neglected or refused to keep records and forms of consignment cards, consignors account of sale, and buyers account of sale and bill of sale approved by the state board of stock inspection commissioners required by this article, or rules or regulations made pursuant thereto, or fails or refuses to permit inspection of such records by any authorized agent of said board;

(f) If the state board of stock inspection commissioners finds that the licensee has failed or refused to withhold sale proceeds of any livestock designated by the authorized brand inspector as livestock of which the title is questionable in accordance with section 35-55-114, or if the board finds that the licensee has failed or refused to transmit promptly

to said board, after the expiration of thirty days, the proceeds of all livestock to which ownership has not been established in accordance with section 35-55-114;

(g) If the state board of stock inspection commissioners finds that the licensee has issued a company account of purchase which establishes ownership of or transfers title to any cattle, horses, or mules which have not been inspected for brands and ownership or title verified by an authorized Colorado brand inspector immediately prior to or on the licensee's market day designated by the board;

(h) If the state board of stock inspection commissioners finds that the licensee attempted to obtain or obtained a livestock market license by fraud or misrepresentation;

(i) If the state board of stock inspection commissioners finds that the licensee is engaging in or has engaged in advertising which is misleading, deceptive, or false;

(j) If the state board of stock inspection commissioners finds that the licensee has violated or has aided or abetted in the violation of any order of the state board of stock inspection commissioners;

(k) If the state board of stock inspection commissioners finds that the licensee has aided or abetted in the violation of any provision of this article or of any rule or regulation adopted by the state board of stock inspection commissioners pursuant to this article;

(l) If the state board of stock inspection commissioners finds that the licensee has violated or has aided or abetted in the violation of the federal "Packers and Stockyards Act, 1921", as amended (7 U.S.C. sec. 181 et seq.);

(m) If the state board of stock inspection commissioners finds that the licensee has been convicted of or has entered a plea of nolo contendere to a felony for an offense related to the conduct regulated by this article.

(2) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the state board of stock inspection commissioners, does not warrant formal action but which should not be dismissed as being without merit, the board may send a letter of admonition to any licensed public livestock market operator. Such letter shall be sent to the licensee by certified mail, and a copy thereof sent to the complainant, advising the operator that the operator may, within twenty days after receipt of the letter, make a written request to the board to institute a formal hearing pursuant to section 35-55-108 to determine the propriety of the alleged misconduct. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal proceedings.

Source: L. 49: p. 699, § 7. CSA: C. 160, § 209(24). CRS 53: § 8-11-7. C.R.S. 1963: § 8-11-7. L. 65: p. 236, § 6. L. 71: p. 168, § 1. L. 91: IP(1) amended and (1)(h) to (1)(m) and (2) added, pp. 167, 168, §§ 4, 5, effective July 1. L. 94: (2) amended, p. 1645, § 77, effective May 31. L. 2006: IP (1) and (1)(l) amended, p. 1507, § 58, effective June 1.

Cross references: For procedure in cancellation of licenses, see § 24-4-104.

ANNOTATION

This section and § 35-55-114 leave no discretion to agency once it has been determined that a violation has occurred. Howard & Assocs.

v. State Bd. of Stock Inspection Comm'rs, 35 Colo. App. 86, 532 P.2d 366 (1974).

35-55-108. Investigation - hearing - administrative law judge. (1) The state board of stock inspection commissioners, upon its own motion on the basis of reasonable cause or upon the complaint in writing of any person, shall investigate the activities of any licensed livestock market operator or any person who assumes to act in such capacity within the state. Based on the findings of such investigation, the board may initiate proceedings under this article for the discipline of a licensee.

(2) The board shall, through the department of agriculture, employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings for

placing a licensee on probation or for revoking or suspending a license on behalf of the board. The administrative law judges shall conduct such hearings pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

Source: L. 49: p. 700, § 8. **CSA:** C. 160, § 209(25). **CRS 53:** § 8-11-8. **C.R.S. 1963:** § 8-11-8. **L. 65:** p. 236, § 7. **L. 91:** Entire section amended, p. 168, § 6, effective July 1.

35-55-109. Sanitary conditions. Every public livestock market shall be maintained in a sanitary condition and cleaned and disinfected under the supervision of a veterinarian authorized by the state board of stock inspection commissioners when necessary.

Source: L. 49: p. 700, § 9. **CSA:** C. 160, § 209(26). **CRS 53:** § 8-11-9. **C.R.S. 1963:** § 8-11-9. **L. 65:** p. 237, § 8.

35-55-110. Scales. All scales used in the operation of public livestock markets shall come under and be controlled by Colorado's weights and measures laws.

Source: L. 49: p. 700, § 10. **CSA:** C. 160, § 209(27). **CRS 53:** § 8-11-10. **C.R.S. 1963:** § 8-11-10. **L. 65:** p. 237, § 9.

Cross references: For Colorado's weights and measures laws, see article 14 of this title.

35-55-111. Records. Operators of all public livestock markets shall keep on file an accurate record of the date on which a consignment of animals was received and sold, together with the name and address of the buyer and seller, the number and species of the animals received and sold, and the marks and brands on each animal. Said records together with the gross selling prices, commission, and other proper care, handling, and sale charges on each consignment shall be available for inspection by the executive officer of the state board of stock inspection commissioners, his deputy, or authorized inspector. All records of sales during preceding months shall be kept readily accessible for immediate examination.

Source: L. 49: p. 700, § 11. **CSA:** C. 160, § 209(28). **CRS 53:** § 8-11-11. **C.R.S. 1963:** § 8-11-11. **L. 65:** p. 237, § 10.

ANNOTATION

Operator of livestock ring is "seller" within the meaning of the uniform commercial code. *Ranchers & Farmers Livestock Auction Co. v.*

Honey, 38 Colo. App. 69, 552 P.2d 313, cert. denied, 191 Colo. 503, 553 P.2d 799 (1976).

35-55-112. Brand inspection. (1) All cattle, horses, mules, and burros, upon entering a public livestock market, shall be inspected for iron brands, earmarks, and other identifying characteristics before being offered for sale. A bill of sale signed by the recorded owner of the brands or no brands or an account of sale showing the brands or no brands on the livestock consigned shall be produced by the consignor. The brand inspector in charge may, in justifiable circumstances, permit the sale of cattle, horses, mules, or burros whose ownership is questionable and then proceed to impound the proceeds of the sale of such animals. After any livestock are consigned to any public livestock market, they shall be held and treated as if the ownership thereof has not been established, until a proper bill of sale or account of sale is produced by the consignor. Such inspections shall be made by authorized brand inspectors who have been approved by the state board of stock inspection commissioners, and a fee per head in the amount prescribed by the state board of stock inspection commissioners pursuant to section 35-41-104, shall be withheld from the consignor's proceeds of sale by the market operator, to be paid to the state board of stock inspection commissioners, for brand inspection on all cattle, horses, mules, and burros.

(2) The authorized brand inspector making the inspection and collecting the fees

prescribed shall issue an official brand inspection certificate in duplicate, one copy to be the property of the owner or operator of the auction market, and will be authority for the public livestock market to issue a bill of sale to the purchaser of any livestock sold or disposed of through a licensed livestock auction market, the original to be delivered to the office of the state board of stock inspection commissioners.

Source: L. 49: p. 701, § 12. CSA: C. 160, § 209(29). CRS 53: § 8-11-12. C.R.S. 1963: § 8-11-12. L. 65: pp. 225, 237, §§ 3, 11. L. 71: p. 169, § 1. L. 75: (1) amended, p. 1351, § 1, effective May 31. L. 81: (1) amended, p. 1711, § 7, effective July 1. L. 98: Entire section amended, p. 275, § 14, effective August 5.

ANNOTATION

Duty of brand inspector under statute is two-fold: Toward the state as his employer and toward the livestock sales ring operator who is required by the statute to rely upon his inspection and certification. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

Each brand inspector is supplied with a book of registered brands, and with supple-

ments containing additional brands or changes in the ownership of brands, and failure to resort to the brand book to determine the ownership of animals to be sold in a livestock sales ring is negligence for which a brand inspector is liable. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

35-55-113. Veterinary inspection - rules. (1) All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by an authorized veterinarian of the department of agriculture. The veterinarian shall examine or test, as indicated or required, animals consigned to the public livestock market for the purpose of determining their condition of health and freedom from infectious or contagious animal diseases. If, in the opinion of the examining veterinarian, said animals are free of symptoms of infectious or contagious disease and have not, to the best of his knowledge, been exposed to any infectious or contagious diseases, he shall issue a health certificate, signed by him, to any purchaser who so requests. Said health certificate shall be delivered to the purchaser at the time of rendering the account of sale or bill of sale. In addition to the requirements of this subsection (1) for all interstate movements, livestock must meet federal interstate and state of destination requirements. All animals found to be affected with any recognized infectious or contagious diseases shall be immediately isolated, quarantined, and held in conformity with the health requirements of Colorado law and the rules and regulations of the department of agriculture. All fees or taxes for veterinary services, prior to the sale of the livestock, shall be paid by the operator of the public livestock market. All livestock intended for interstate shipment, on which the United States department of agriculture requires specific inspections or tests that can only be made by an approved and licensed veterinarian, shall be made at the expense of the buyer or the party who intends to move them interstate.

(2) (a) Swine may be moved from a public livestock market if, upon inspection, the swine are found free from symptoms of cholera or other contagious, infectious, or communicable diseases and in a thriving condition.

(b) Repealed.

(3) Feeding swine and breeding swine going from a market to a farm shall be identified by an approved ear tag, individual tattoo, or ear notch. Sows and boars going to slaughter shall be identified in accordance with the market swine identification program as prescribed in the uniform methods and rules for brucellosis eradication published by the U.S.D.A. animal plant health inspection service agency, in effect July 1, 1981, and as amended from time to time thereafter.

(4) No animal may be sold or offered for sale at a public livestock market if the animal is injured, disabled, or diseased beyond recovery, or if such injury or disease permanently renders the animal unfit for human consumption. This subsection (4) includes, but is not limited to, any animal with severe neoplasia, any animal that is unable to rise to its feet by itself, and any animal with obviously fractured long bones.

(5) If, in the judgment of an authorized veterinarian of the department, an animal presented at a public livestock market is injured, disabled, or diseased beyond recovery, the veterinarian shall humanely euthanize the animal or direct the consignor to immediately remove the animal from the premises of the public livestock market. All expenses incurred for euthanasia and disposal of an animal under the provisions of this subsection (5) are the responsibility of the consignor. Collection of expenses shall not be the responsibility of the consignee.

(6) The commissioner of agriculture shall adopt reasonable rules for the administration and enforcement of this section, including, but not limited to, rules designating any disease as a disease that renders livestock permanently disabled or the carcasses thereof permanently unfit for human consumption. The commissioner shall promulgate all such rules in accordance with existing antemortem inspection guidelines of the United States department of agriculture food safety inspection service.

Source: L. 49: p. 701, § 13. **CSA:** C. 160, § 209(30). **CRS 53:** § 8-11-13. **C.R.S. 1963:** § 8-11-13. **L. 65:** pp. 238, 242, 243, §§ 12, 1, 2. **L. 81:** (1) and (2)(a) amended, (2)(b) repealed, and (3) added, pp. 1725, 1726, §§ 1, 2, effective June 18. **L. 96:** (4), (5), and (6) added, p. 1333, § 1, effective July 1.

ANNOTATION

Fact that purchasers of livestock waive compliance with this section does not excuse livestock sales ring operator for violation of the law which he and the surety on his bond have bound themselves to observe. *Seal v. State Bd. of Stock Inspection Comm'r's*, 114 Colo. 497, 167 P.2d 22 (1946).

It is not duty of veterinarian to deliver to purchaser health certificate for each hog bought: Delivery should be by the licensee of the livestock sales ring to the purchaser at the time of rendering the account of sale or bill of sale. *Seal v. State Bd. of Stock Inspection Comm'r's*, 114 Colo. 497, 167 P.2d 22 (1946).

35-55-114. Title. The operator of each public livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his public livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for such livestock so sold. It is the further duty of such operator, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through said market is lawfully owned by the consignor thereof, to hold the proceeds received from the sale of said livestock for a reasonable time, not to exceed thirty days, to permit the consignor to establish ownership and if at expiration of that time, the consignor fails to establish his lawful ownership of such livestock, said proceeds shall be released by such operator to the state board of stock inspection commissioners, which board has authority to dispose of said proceeds in accordance with Colorado's estray laws relating to the distribution of estray money, and the board's receipt therefor shall relieve said operator from further responsibility for said proceeds. Proof of ownership and an account of all sales of livestock shall be transmitted by the authorized brand inspector to the state board of stock inspection commissioners.

Source: L. 49: p. 703, § 14. **CSA:** C. 160, § 209(31). **CRS 53:** § 8-11-14. **C.R.S. 1963:** § 8-11-14. **L. 65:** p. 239, § 13.

Cross references: For disposition of the proceeds from the sale of estrays, see § 35-44-106.

ANNOTATION

Law reviews. For article, "One Year Review of Corporations, Partnership, and Agency", see 36 Dicta 27 (1959).

Licensed operator of livestock sales ring warrants to purchaser title of all livestock

sold through his sales ring, and is liable to the rightful owner for the net proceeds in cash received for livestock sold. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958); *Winter Livestock Comm'n Co. v. Noll*, 30 Colo.

App. 141, 489 P.2d 1067 (1971).

This section and § 35-55-107 leave no discretion to the agency once it has been determined that a violation has occurred. *Howard & Assocs. v. State Bd. of Stock Inspection Comm'rs*, 35 Colo. App. 86, 532 P.2d 366 (1974).

Public livestock market is not given power to determine ownership. *Howard & Assocs. v. State Bd. of Stock Inspection Comm'rs*, 35 Colo. App. 86, 532 P.2d 366 (1974).

Operator of livestock ring is "seller" within the meaning of the uniform commercial code.

Ranchers & Farmers Livestock Auction Co. v. Honey, 38 Colo. App. 69, 552 P.2d 313, cert. denied, 191 Colo. 503, 553 P.2d 799 (1976).

Attorney's fees includable as damages for breach of warranty. In an action involving breach of warranty in the sale of livestock by the licensed operator of a livestock sales ring, the expense occasioned by the employment of counsel constitutes a part of the damage sustained by plaintiff in consequence of the breach of such warranty. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

35-55-115. Disposition of fees. All license fees collected from public livestock markets shall be deposited with the state treasurer and shall be placed in the brand inspection fund by the state treasurer for use of the board in paying ordinary expenses of the state board of stock inspection commissioners.

Source: L. 49: p. 703, § 15. CSA: C. 160, § 209(32). CRS 53: § 8-11-15. C.R.S. 1963: § 8-11-15. L. 65: p. 240, § 14. L. 98: Entire section amended, p. 275, § 15, effective August 5.

Cross references: For the brand inspection fund, see § 35-41-102.

35-55-116. Dispersal sales. All dispersal sales made at public livestock markets shall meet the requirements prescribed for other livestock passing through such markets.

Source: L. 49: p. 703, § 16. CSA: C. 160, § 209(33). CRS 53: § 8-11-16. C.R.S. 1963: § 8-11-16. L. 65: p. 240, § 15.

35-55-117. Penalty. Any person, partnership, or corporation who violates any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners is guilty of a class 3 misdemeanor, and any person, partnership, or corporation who commits a second or subsequent violation of any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners commits a class 1 misdemeanor and any such offender shall be punished as provided in section 18-1.3-501, C.R.S. It is the duty of the district attorney of the district in which such offense is committed, upon complaint of any private person, or of a sanitary or brand inspector, or of the state board of stock inspection commissioners, to prosecute the same if, after investigation, he or she believes a violation has occurred. The state board of stock inspection commissioners, upon its own initiative, or upon complaint of any person, through the attorney general may bring an action in the district court of the district where such offense is committed in the name of the people of this state for an injunction against any person violating any of the provisions of this article or of any rule or regulation adopted by the state board of stock inspection commissioners.

Source: L. 49: p. 704, § 17. CSA: C. 160, § 209(34). CRS 53: § 8-11-17. C.R.S. 1963: § 8-11-17. L. 91: Entire section amended, p. 169, § 7, effective July 1. L. 2002: Entire section amended, p. 1552, § 328, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-55-118. Denial of license - hearing. (1) The state board of stock inspection commissioners is empowered to determine summarily whether an applicant for a license to establish and operate a public livestock market meets the requirements set forth in this

article or whether there is probable cause to believe that an applicant has committed any of the acts set forth in section 35-55-107 as grounds for discipline. As set forth in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not meet the requirements for licensure set forth in this article or that probable cause exists to believe that an applicant has committed any of the acts set forth in section 35-55-107, the board may withhold or deny the applicant a license. In such instance, the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination.

(3) Should reasonable grounds for controversy over the board's action in issuing or refusing to issue a license develop, a hearing may be conducted by four members of the board. Following such hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

Source: L. 65: p. 240, § 16. C.R.S. 1963: § 8-11-18. L. 91: Entire section amended, p. 169, § 8, effective July 1.

35-55-119. Termination of functions - repeal of article. This article is repealed, effective July 1, 2019. Prior to the repeal, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 933, § 31, effective April 28. L. 91: Entire section amended, p. 170, § 9, effective July 1. L. 2001: Entire section amended, p. 174, § 3, effective March 28. L. 2004: Entire section amended, p. 350, § 20, effective July 1. L. 2009: Entire section amended, (SB 09-115), ch. 61, p. 218, § 3, effective July 1.

ARTICLE 56

Auctioneers of Livestock

35-56-101.	Stock register.	35-56-105.	Record kept by auctioneers.
35-56-102.	Contents of register.	35-56-106.	Record open to inspection.
35-56-103.	Registration fee.	35-56-107.	Penalty.
35-56-104.	Penalty.	35-56-108.	Disposition of fines.

35-56-101. Stock register. Any person licensed in this state to keep an auction, where horses, mules, or cattle are sold at auction, shall maintain a book called a stock register, in which he shall describe minutely every animal he offers for sale.

Source: R.S. p. 70, § 1. G.L. § 34. G.S. § 87. R.S. 08: § 255. C.L. § 4731. CSA: C. 15, § 17. CRS 53: § 8-12-1. C.R.S. 1963: § 8-12-1.

35-56-102. Contents of register. In such register shall be recorded the person's name who brings forward such animal for sale, whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also, the color, brand or marks, size, and age, as near as may be, of the animal so offered for sale.

Source: R.S. p. 70, § 2. G.L. § 35. G.S. § 88. R.S. 08: § 256. C.L. § 4732. CSA: C. 15, § 18. CRS 53: § 8-12-2. C.R.S. 1963: § 8-12-2.

35-56-103. Registration fee. The keeper of such auction shall be entitled to charge and receive for the registering of each animal so entered in his register, before he offers the same for sale, the sum of twenty-five cents. All stock registers shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the right of property may be had.

Source: R.S. p. 70, § 3. G.L. § 36. G.S. § 89. R.S. 08: § 257. C.L. § 4733. CSA: C. 15, § 19. CRS 53: § 8-12-3. C.R.S. 1963: § 8-12-3.

35-56-104. Penalty. Any person who offers for sale at auction any animal named in section 35-56-101, without first complying with the requirements of this article as to registration, upon conviction thereof, shall be punished by a fine of twenty-five dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

Source: R.S. p. 70, § 4. G.L. § 37. G.S. § 90. R.S. 08: § 258. C.L. § 4734. CSA: C. 15, § 20. CRS 53: § 8-12-4. C.R.S. 1963: § 8-12-4.

35-56-105. Record kept by auctioneers. All auctioneers, commission merchants, and other persons who keep a place or stand for publicly vending horses, mules, and horned cattle, or any of them, in a book kept for that purpose, shall keep a true and faithful record of all the animals purchased or sold by them, or under their control, which record shall contain a brief description of the animal, including its age, value, marks, brands, and date of purchase and sale, and the name and residence of the seller and purchaser in each case.

Source: R.S. p. 70, § 5. G.L. § 38. G.S. § 91. R.S. 08: § 259. C.L. § 4735. CSA: C. 15, § 21. CRS 53: § 8-12-5. C.R.S. 1963: § 8-12-5.

35-56-106. Record open to inspection. The record provided for in section 35-56-105 shall be open to the inspection of all persons during the ordinary business hours of the day.

Source: R.S. p. 70, § 6. G.L. § 39. G.S. § 92. R.S. 08: § 260. C.L. § 4736. CSA: C. 15, § 22. CRS 53: § 8-12-6. C.R.S. 1963: § 8-12-6.

35-56-107. Penalty. Any person violating any of the provisions of this article shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in any court of competent jurisdiction, with cost of suit.

Source: R.S. p. 70, § 7. G.L. § 40. G.S. § 93. R.S. 08: § 261. C.L. § 4737. CSA: C. 15, § 23. CRS 53: § 8-12-7. C.R.S. 1963: § 8-12-7.

35-56-108. Disposition of fines. All fines recovered under the provisions of this article shall be paid into the county treasury of the proper county, and appeals shall be allowed to the district court as in civil cases.

Source: R.S. p. 71, § 8. G.L. § 41. G.S. § 94. R.S. 08: § 262. C.L. § 4738. CSA: C. 15, § 24. CRS 53: § 8-12-8. C.R.S. 1963: § 8-12-8.

ARTICLE 57

Colorado Beef Council

Editor's note: This article was numbered as article 20 of chapter 8, C.R.S. 1963. The provisions of this article were amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

35-57-101.	Short title.		ity - board of directors.
35-57-102.	Legislative declaration.	35-57-106.	Qualifications of members.
35-57-103.	Definitions.	35-57-107.	Terms of members.
35-57-104.	Colorado beef council author- ity - creation.	35-57-108.	Declaring office of member vacant.
35-57-105.	Colorado beef council author-	35-57-109.	Removal of member.

35-57-110.	Expenses of members.	35-57-116.	Rules and regulations.
35-57-111.	Meeting place.	35-57-117.	Collection of fees for purposes of this article - custody and disbursement.
35-57-112.	Meetings.		Collection procedure.
35-57-113.	Duties and powers of the board.	35-57-118.	Refunds.
35-57-114.	Acceptance of grants and gifts.	35-57-119.	Payment of board money to authorized agent - deposits and withdrawals.
35-57-115.	Payments to national organizations.	35-57-120.	

35-57-101. Short title. This article shall be known and may be cited as the “Colorado Beef Council Authority Act”.

Source: L. 93: Entire article amended with relocations, p. 1848, § 1, effective July 1.

Editor’s note: The former § 35-57-101 was relocated to § 35-57-102 in 1993.

35-57-102. Legislative declaration. (1) It is declared to be in the interest of the public welfare that owners of cattle shall be authorized and encouraged to act jointly and in cooperation with handlers, processors, dealers, and purchasers of cattle in promoting and stimulating, by research, education, advertising, and other methods, the increased and efficient production, distribution, use, and sale of cattle and beef products; and it is the intent and purpose of this article to authorize and provide a method and procedure for a promotional program for the cattle industry and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the cattle industry of this state is affected with a public interest in that, among other things:

(a) The production, processing, handling, purchasing, manufacturing, and distributing of beef and beef products constitutes a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many thousands of its population but also furnishes essential foods that are vital to the public health and welfare.

(b) Stabilization, maintenance, and expansion of the cattle industry of Colorado and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to provide and maintain an adequate standard of living for a great segment of the population of this state, to maintain proper wage scales for those engaged in the cattle industry, and to maintain existing employment.

(c) The essentiality of beef and beef products in proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof and be protected against misrepresentation and deception by the dissemination of accurate and scientific information relative to the healthful qualities of beef and beef products, their various classifications, the food values, and industrial and medicinal uses thereof; the methods, care, and precautions necessary to their proper production, processing, manufacture, and distribution; the necessary costs and expenses thereof; and the necessity and desirability on the part of the public of using and consuming beef and beef products of the highest standards of quality.

(2) The purposes of this article are:

(a) To enable the cattle industry, with the aid of the state, to protect their right to market, to develop, maintain, and expand the state, nationwide, and foreign markets for beef and beef products produced, processed, or manufactured in this state, and the use and the consumption of such beef and beef products therein;

(b) In aid, but not in limitation, of the purpose in paragraph (a) of this subsection (2), to authorize and enable the board to formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this article, sales stimulation and consumer or other educational programs designed to increase the use and consumption of beef and beef products;

(c) To provide funds for the administration and enforcement of this article by contributions or fees in the event the federal cattlemen's beef promotion and research board, established in 7 U.S.C. sec. 2904 (1), ceases to exist. Such moneys shall be collected in the manner prescribed in this article.

Source: L. 93: Entire article amended with relocations, p. 1848, § 1, effective July 1. **L. 2000:** (2)(c) amended, p. 516, § 1, effective May 12. **L. 2003:** (2)(c) amended, p. 1046, § 1, effective August 6.

Editor's note: This section is similar to former § 35-57-101 as it existed prior to 1993, and the former § 35-57-102 was relocated to § 35-57-105.

35-57-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado beef council authority created by section 35-57-104 (1).

(2) "Board" or "beef board" or "beef council" means the board of the Colorado beef council authority created by section 35-57-104 (1).

Source: L. 93: Entire article amended with relocations, p. 1849, § 1, effective July 1.

Editor's note: The former § 35-57-103 was relocated to § 35-57-106 in 1993.

35-57-104. Colorado beef council authority - creation. (1) There is hereby created the Colorado beef council authority, which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

Source: L. 93: Entire article amended with relocations, p. 1849, § 1, effective July 1. **L. 96:** (1)(c) amended, p. 1543, § 136, effective June 1.

Editor's note: The former § 35-57-104 was relocated to § 35-57-107 in 1993.

35-57-105. Colorado beef council authority - board of directors. (1) The powers of the authority shall be vested in the board of directors of the Colorado beef council authority, which shall be composed of:

(a) Two persons who raise, breed, or grow cattle or calves for beef production;

(b) Two persons who are actively engaged in the business of feeding cattle and operating a feedlot;

(c) Two persons actively engaged in the processing, slaughtering, handling, or marketing of beef;

(d) One person engaged in the production, on a dairy farm, of fluid milk and the selling of dairy cattle for beef;

(e) One person actively engaged in the processing and distribution of beef or beef products.

(2) The governor shall appoint the members of the board. In making such appointments, the governor shall take into consideration nominations and recommendations made to the governor by organizations who represent, or who are engaged in, the same type of production or business as the person so nominated or recommended for appointment as a

member of the board. Each member shall continue in office until such member's successor is appointed and qualified. The terms of no two members from the same industry shall expire on the same year.

(3) (Deleted by amendment, L. 93, p. 1850, § 1, effective July 1, 1993.)

Source: L. 93: Entire article amended with relocations, p. 1850, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-102 as it existed prior to 1993, and the former § 35-57-105 was relocated to § 35-57-108.

35-57-106. Qualifications of members. (1) Each member of the board shall have the following qualifications which shall continue during the member's term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of the state of Colorado.

(c) Each shall demonstrate through membership in a producers' organization, or an organization representing this type of production or business, or public service or otherwise, an active interest in the development of the beef industry of Colorado.

(d) Each shall be actively engaged in the type of production or business which the member will represent on the board for a period of at least five years and shall derive a substantial proportion of such member's income from that type of production or business. Each shall be a contributor to the Colorado beef board.

(e) No more than one-half of the board shall be affiliated with one political party.

Source: L. 93: Entire article amended with relocations, p. 1850, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-103 as it existed prior to 1993, and the former § 35-57-106 was relocated to § 35-57-109.

35-57-107. Terms of members. (1) The members of the Colorado beef board who are in office on July 1, 1993, shall comprise the original board of the beef council authority, and their initial terms on the beef council authority shall end at the same time as the terms to which they were appointed on the Colorado beef board prior to July 1, 1993.

(2) On the expiration of the term of a member of the board, that member's successor shall be appointed by the governor for a term of four years; except that, in case of a vacancy, the governor shall appoint a person who shall serve for the unexpired term.

Source: L. 93: Entire article amended with relocations, p. 1851, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-104 as it existed prior to 1993, and the former § 35-57-107 was relocated to § 35-57-110.

35-57-108. Declaring office of member vacant. The governor shall immediately declare the office of any member of the board vacant whenever the governor finds that: The member no longer is actively engaged in the type of beef or dairy production or business the member was engaged in at the time of the member's appointment; the member has become a resident of another state; the member is unable to perform the duties of the office.

Source: L. 93: Entire article amended with relocations, p. 1851, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-105 as it existed prior to 1993, and the former § 35-57-108 was relocated to § 35-57-111.

35-57-109. Removal of member. (1) The governor may remove any member of the board for inefficiency, neglect of duty, or misconduct in office or when the segment of the industry which the member represents fails or elects not to pay its equitable share relating to the promotion of beef. Such member shall be entitled to a public hearing after serving

upon such member, ten days before the hearing, a copy of the charges against the member, together with the notice of the time and place of the hearing. At the hearing, the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged.

(2) In every case of removal, the governor shall file in the office of the secretary of state a complete statement of all charges against the member, and the governor's findings thereon, together with a record of the entire proceedings had in connection therewith.

Source: L. 93: Entire article amended with relocations, p. 1851, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-106 as it existed prior to 1993, and the former § 35-57-109 was relocated to § 35-57-112.

35-57-110. Expenses of members. Members, officers, and employees of the board may receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

Source: L. 93: Entire article amended with relocations, p. 1852, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-107 as it existed prior to 1993, and the former § 35-57-110 was relocated to § 35-57-113.

35-57-111. Meeting place. The board shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the board or to be affected by its acts.

Source: L. 93: Entire article amended with relocations, p. 1852, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-108 as it existed prior to 1993, and the former § 35-57-111 was relocated to § 35-57-114.

35-57-112. Meetings. The board shall elect a chairperson from among its members and a secretary-treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance. The board shall meet regularly once each six months and at such other times as called by the chairperson. The chairperson may call special meetings at any time and shall call a special meeting when requested by four or more members of the board.

Source: L. 93: Entire article amended with relocations, p. 1852, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-109 as it existed prior to 1993, and the former § 35-57-112 was relocated to § 35-57-115.

35-57-113. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of beef and beef products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of beef and its products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters concerning the beef industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to carry out the purposes of the board as authorized by this article;

(f) Borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(g) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(h) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(i) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the board, and enter into contracts with such organizations or agencies for carrying on joint programs;

(j) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board as beneficial to the beef industry of this state, and expend funds in connection therewith if that program is compatible with the powers conferred by this article;

(k) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties;

(l) Enter into contracts for the promotion of beef and develop new markets through such promotion;

(m) Receive and hold funds for and on behalf of the national beef promotion and research board as a qualified state beef council pursuant to the beef promotion and research order, 7 CFR 1260.172.

(2) The board's powers and duties, as set forth in subsection (1) of this section, and its activities pursuant to this article are consistent with those of a qualified state beef council pursuant to 7 CFR 1260.172 to 1260.181.

Source: L. 93: Entire article amended with relocations, p. 1852, § 1, effective July 1. L. 2000: (2) added, p. 517, § 3, effective May 12.

Editor's note: This section is similar to former § 35-57-110 as it existed prior to 1993, and the former § 35-57-113 was relocated to § 35-57-116.

35-57-114. Acceptance of grants and gifts. The board may accept grants, donations, contributions, or gifts from any source for expenditures for any purpose consistent with the powers conferred on the board.

Source: L. 93: Entire article amended with relocations, p. 1853, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-111 as it existed prior to 1993.

35-57-115. Payments to national organizations. From the contributions it receives, the board may pay or contribute to organizations such as, but not limited to, the national livestock and meat board to carry out work and programs approved by the board on a national basis.

Source: L. 93: Entire article amended with relocations, p. 1853, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-112 as it existed prior to 1993, and the former § 35-57-115 was relocated to § 35-57-117.

ANNOTATION

Law reviews. For note, "Colorado's Ombudsman Office", see 45 Den. L.J. 93 (1968).

35-57-116. Rules and regulations. The board is authorized to promulgate regulations necessary to carry out the intent and purposes of this article.

Source: L. 93: Entire article amended with relocations, p. 1853, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-113 as it existed prior to 1993, and the former § 35-57-116 was relocated to § 35-57-118.

Cross references: For rule-making procedures, see article 4 of title 24.

35-57-117. Collection of fees for purposes of this article - custody and disbursement. (1) (a) In order for the board to carry out the provisions and intent of this article, the state board of stock inspection commissioners, by and through the brand commissioner, shall collect a beef board fee on cattle and calves that are sold for which a brand inspection fee is also collected as provided in section 35-41-104 (5). Commencing July 1, 1993, the fee shall not exceed one dollar per head or the amount assessed pursuant to the beef promotion and research order, 7 CFR 1260.172, as amended, whichever is greater.

(b) The fee set forth in paragraph (a) of this subsection (1) shall also be collected from any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, and such producer shall remit to the brand commissioner the set fee per head of cattle or the equivalent thereof.

(c) The fee assessed on each head of cattle sold pursuant to paragraph (b) of this subsection (1) shall not apply to cattle owned by a person if such person:

(I) Certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef product is a sales commission, handling fee, or other service fee;

(II) Certifies that the person acquired ownership of the cattle to facilitate the transfer of ownership of such cattle from the seller to a third party;

(III) Establishes that such cattle were resold not later than ten days after the date on which the person acquired ownership.

(2) (a) The beef board fee collected pursuant to subsection (1) of this section shall be kept separate and distinct from other moneys collected by the state board of stock inspection commissioners. At least once each two months, such fee shall be transferred or paid over to the board, less a sum not in excess of three percent per head on each animal for which a fee is collected.

(b) The board shall utilize the moneys collected pursuant to subsection (1) of this section in carrying out the purposes of this article. In carrying out the purposes of this article, the board may coordinate its activities with any state agency and may allocate such sums collected under this section as are necessary for such coordination.

(3) (Deleted by amendment, L. 93, p. 1853, § 1, effective July 1, 1993.)

Source: L. 93: Entire article amended with relocations, p. 1853, § 1, effective July 1.
L. 2000: (1) and (2) amended, p. 516, § 2, effective May 12.

Editor's note: This section is similar to former § 35-57-115 as it existed prior to 1993, and the former § 35-57-117 was relocated to § 35-57-119.

Cross references: For the brand inspection fee, see § 35-53-101.

ANNOTATION

Law reviews. For note, "Colorado's Ombudsman Office", see 45 Den. L.J. 93 (1968).

35-57-118. Collection procedure. (1) The operators of all stockyards, slaughterhouses, packing plants, and livestock auction markets shall deduct from the proceeds of sale owed by them to the respective owners of animals the beef board fee as authorized by section 35-57-117.

(2) When an operator sends or gives any written statement to an owner or such owner's agent relating to the proceeds owing such owner, the operator shall include a statement of

the amount deducted from such proceeds for board purposes under section 35-57-117 and the amount deducted from such proceeds under article 53 of this title for brand inspection.

(3) In accordance with the provisions of subsection (1) of this section, operators shall promptly pay to the state board of stock inspection commissioners all beef board fees collected by them.

Source: L. 93: Entire article amended with relocations, p. 1854, § 1, effective July 1. **L. 2000:** (1) and (3) amended, p. 517, § 4, effective May 12.

Editor's note: This section is similar to former § 35-57-116 as it existed prior to 1993, and the former § 35-57-118 was relocated to § 35-57-120.

35-57-119. Refunds. (1) Any person who paid a beef board fee at the time of the brand inspection as required by section 35-57-117 shall be entitled to an eighty-five percent refund of such fee. A claim for a refund shall be made to the board of directors of the Colorado beef council authority, hereinafter referred to as the "board", within ten days after the date of the brand inspection.

(2) Only the person who paid the fee shall submit a claim for a refund to the board. A written and signed request for a refund of such fee and a copy of the Colorado brand inspection certificate shall be required for such refund. A person may submit a claim by facsimile or by mail. The postmark date or the facsimile confirmation date shall be used to determine the timeliness of a claim.

(3) The board, before processing or making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for such refund. All persons who forward claims for such refunds shall keep pertinent records for a period of at least three years and shall make such records available to the board upon request. The board may file an action to recover a refund of a fee from any person who has obtained such refund illegally.

(4) Any person who files a fraudulent or false claim for a refund, or who by any false pretenses obtains or attempts to obtain a refund not legally due to such person, or who signs a refund claim in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished according to law.

Source: L. 93: Entire article amended with relocations, p. 1854, § 1, effective July 1. **L. 2000:** Entire section repealed, p. 518, § 5, effective May 12. **L. 2003:** Entire section RC&RE, p. 1046, § 2, effective August 6.

Editor's note: This section is similar to former § 35-57-117 as it existed prior to 1993.

35-57-120. Payment of board money to authorized agent - deposits and withdrawals. Any person authorized by the board to receive or disburse funds as provided in this article shall post with the board surety bond in an amount the board determines sufficient, the cost or premium to be paid by the board.

Source: L. 93: Entire article amended with relocations, p. 1855, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57-118 as it existed prior to 1993.

ARTICLE 57.5

Colorado Sheep and Wool Authority

Editor's note: This article was added in 1975. This article was amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and

the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

35-57.5-101.	Short title.	35-57.5-110.	Expenses of members, alternates, and employees.
35-57.5-102.	Legislative declaration.	35-57.5-111.	Meeting place.
35-57.5-103.	Definitions.	35-57.5-112.	Meetings.
35-57.5-104.	Colorado sheep and wool authority - creation.	35-57.5-113.	Duties and powers of the board.
35-57.5-105.	Colorado sheep and wool board - creation.	35-57.5-114.	Acceptance of grants and gifts.
35-57.5-106.	Qualifications of members and alternates.	35-57.5-115.	Rules and regulations.
35-57.5-107.	Terms of members and alternates.	35-57.5-116.	License fee - expenditure of funds.
35-57.5-108.	Declaring office of member or alternate vacant.	35-57.5-117.	Acts constituting violation.
35-57.5-109.	Removal of member or alternate.	35-57.5-118.	Enforcement.
		35-57.5-119.	Refunds.

35-57.5-101. Short title. This article shall be known and may be cited as the "Colorado Sheep and Wool Authority Act".

Source: L. 93: Entire article amended with relocations, p. 1838, § 1, effective July 1.

Editor's note: The former § 35-57.5-101 was relocated to § 35-57.5-102 in 1993.

35-57.5-102. Legislative declaration. (1) It is hereby declared to be in the interest of the public welfare that owners of sheep be authorized and encouraged to act jointly and in cooperation in promoting and stimulating, by research, education, advertising, and other methods, the increased and efficient production, distribution, use, and sale of sheep and sheep products. It is the intent and purpose of this article to authorize and provide a method and procedure for effectively correlating and encouraging the advancement of the sheep industry and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the sheep industry of this state is affected with a public interest in that the stabilization, maintenance, and expansion of the sheep industry of Colorado and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet and an adequate supply of animal fiber; to protect, for the state and its political subdivisions, a necessary source of tax revenue; to provide and maintain an adequate standard of living for a great segment of the population of this state; to maintain proper wage scales for those engaged in the sheep industry; and to maintain existing employment.

(2) The purpose of this article is to enable the sheep industry to effectively correlate and encourage the advancement and improvement of its commodities.

Source: L. 93: Entire article amended with relocations, p. 1838, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-101 as it existed prior to 1993, and the former § 35-57.5-102 was relocated to § 35-57.5-103.

35-57.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado sheep and wool authority created by section 35-57.5-104 (1).

(1.5) "Board" or "sheep and wool board" means the Colorado sheep and wool board.

(2) "Commissioner" means the commissioner of agriculture.

(3) “Feeder” means a person who commercially feeds sheep that are purchased from producers or fed for producers on a contract basis.

(4) “Handler” means a person who buys, ships, commercially feeds, processes, or distributes sheep that have been sold by or on behalf of a producer or that have been purchased or otherwise acquired from a producer. “Handler” includes a producer who buys, ships, commercially feeds, processes, or distributes such producer’s own sheep.

(5) “Producer” means a person who raises or breeds sheep or produces wool from sheep.

Source: L. 93: Entire article amended with relocations, p. 1839, § 1, effective July 1.
L. 97: (3) to (5) added, p. 177, § 1, effective March 31.

Editor’s note: This section is similar to former § 35-57.5-102 as it existed prior to 1993, and the former § 35-57.5-103 was relocated to § 35-57.5-105.

35-57.5-104. Colorado sheep and wool authority - creation. (1) There is hereby created the Colorado sheep and wool authority, which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the “Colorado Governmental Immunity Act”, article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

Source: L. 93: Entire article amended with relocations, p. 1839, § 1, effective July 1.
L. 96: (1)(c) amended, p. 1543, § 137, effective June 1.

Editor’s note: The former § 35-57.5-104 was relocated to § 35-57.5-106 in 1993.

35-57.5-105. Colorado sheep and wool board - creation. (1) The powers of the authority shall be vested in the Colorado sheep and wool board, which is hereby created, which shall be composed of twelve members and twelve alternates who raise, breed, grow, or feed sheep and wool or lambs for sheep production.

(2) The board members and alternates shall be appointed as follows:

(a) One member and an alternate from an area comprising the counties of Eagle, Garfield, Grand, Jackson, Moffat, Pitkin, Rio Blanco, and Routt, which shall be known as district 1;

(b) One member and an alternate from an area comprising the counties of Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel, which shall be known as district 2;

(c) One member and an alternate from an area comprising the counties of Archuleta, Alamosa, Conejos, Costilla, Dolores, Hinsdale, La Plata, Mineral, Montezuma, Rio Grande, Saguache, and San Juan, which shall be known as district 3;

(d) One member and an alternate from an area comprising those counties not in districts 1 to 3, which shall be known as district 4;

(e) Two members and their alternates, appointed from the state at large, who are actively engaged in the commercial feeding of sheep;

(f) Six members and their alternates who are actively engaged in sheep production or commercial feeding will be appointed at large. All appointments from this group will be made so that the number of feeders and producers on the board reflects the percentage of fees paid by the feeders and the producers. The selection of at-large producer members shall also be a reflection of the proportion of fees paid by producers in each district within the state.

(3) Each member and alternate of the board shall be appointed by the commissioner from nominations received from producers or producers’ organizations in the district in which the member or alternate resides or has a principal place of business.

(4) (Deleted by amendment, L. 93, p. 1839, § 1, effective July 1, 1993.)

Source: **L. 93:** Entire article amended with relocations, p. 1839, § 1, effective July 1. **L. 97:** (1) and (2) amended, p. 177, § 2, effective March 31. **L. 98:** IP(2) amended, p. 828, § 48, effective August 5.

Editor's note: This section is similar to former § 35-57.5-103 as it existed prior to 1993, and the former § 35-57.5-105 was relocated to § 35-57.5-107.

Cross references: For additional duties of the board, see § 35-40-205.

35-57.5-106. Qualifications of members and alternates. (1) Each member and alternate of the board shall have the following qualifications, which shall continue during such person's term of office:

- (a) The person shall be a citizen of the United States.
- (b) The person shall be a bona fide resident of the state of Colorado and reside or maintain a principal place of business in the district from which the person is appointed.
- (c) The person shall have demonstrated, through membership in a sheep producers' organization or an organization representing this type of production or business or through public or other service, an active interest in the development of the sheep industry of Colorado.
- (d) The person shall have been actively engaged in the raising, breeding, or growing of sheep for a period of at least three years and shall derive a substantial proportion of his or her income from that type of production or business.

Source: **L. 93:** Entire article amended with relocations, p. 1840, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-104 as it existed prior to 1993, and the former § 35-57.5-106 was relocated to § 35-57.5-108.

35-57.5-107. Terms of members and alternates. (1) The appointments of members and alternates to the Colorado sheep and wool board shall be made on or before July 1, 1997. Four members shall be appointed for terms of one year, four members shall be appointed for terms of two years, and four members shall be appointed for terms of three years. Thereafter, all appointments shall be for three-year terms.

(2) Upon the expiration of the term of a member and such member's alternate as provided in subsection (1) of this section, their reappointment or successors shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy of a member, such member's appointed alternate shall serve the balance of the member's unexpired term, and, in the case of a vacancy of an alternate, the commissioner shall appoint a person as provided in section 35-57.5-105 (3) who shall serve for the unexpired term.

Source: **L. 93:** Entire article amended with relocations, p. 1840, § 1, effective July 1. **L. 97:** (1) amended, p. 178, § 3, effective March 31.

Editor's note: This section is similar to former § 35-57.5-105 as it existed prior to 1993, and the former § 35-57.5-107 was relocated to § 35-57.5-109.

35-57.5-108. Declaring office of member or alternate vacant. The commissioner shall immediately declare the office of any member or alternate of the board vacant whenever the commissioner finds that: The member or alternate no longer is actively engaged in the production of sheep; the member or alternate has become a resident of another state; or the member or alternate is unable to perform the duties of the office.

Source: **L. 93:** Entire article amended with relocations, p. 1841, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-106 as it existed prior to 1993, and the former § 35-57.5-108 was relocated to § 35-57.5-110.

35-57.5-109. Removal of member or alternate. (1) The commissioner may remove any member or alternate of the board for inefficiency, neglect of duty, or misconduct in office. Such member or alternate shall be entitled to a public hearing before the board with the commissioner presiding, after service upon the member or alternate ten days before the hearing of a copy of the charges against the member or alternate together with a notice of the time and place of the hearing. At the hearing, the member or alternate shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged.

(2) In every case of removal, the commissioner shall file in the office of the secretary of state a complete statement of all charges against the member or alternate and the commissioner's findings thereon, together with a record of the entire proceedings had in connection therewith.

Source: L. 93: Entire article amended with relocations, p. 1841, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-107 as it existed prior to 1993, and the former § 35-57.5-109 was relocated to § 35-57.5-111.

35-57.5-110. Expenses of members, alternates, and employees. Members, alternates, officers, and employees of the board may receive compensation for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

Source: L. 93: Entire article amended with relocations, p. 1841, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-108 as it existed prior to 1993, and the former § 35-57.5-110 was relocated to § 35-57.5-112.

35-57.5-111. Meeting place. The board shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of a majority of those most likely to have business with the board or to be affected by its acts.

Source: L. 93: Entire article amended with relocations, p. 1842, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-109 as it existed prior to 1993, and the former § 35-57.5-111 was relocated to § 35-57.5-113.

35-57.5-112. Meetings. The first board appointed shall meet as soon as practicable for the purpose of organizing. It shall elect a chairman from among its members and a secretary-treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the board. Thereafter, the board shall meet regularly once each three months or at such other times as called by the chairman. The chairman may call special meetings at any time and shall call a special meeting when requested by three or more members of the board.

Source: L. 93: Entire article amended with relocations, p. 1842, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-110 as it existed prior to 1993, and the former § 35-57.5-112 was relocated to § 35-57.5-114.

35-57.5-113. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of sheep and sheep products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of sheep and sheep products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters of trade concerning the sheep industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to the carrying out of the purposes of the board as authorized by this article;

(f) Make grants to research agencies for the financing of special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(g) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(h) Cooperate with and enter into contracts with any local, state, or nationwide organization or agency engaged in work or activities similar to those of the board and enter into contracts with such organizations or agencies for carrying on joint programs;

(i) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board to be beneficial to the sheep industry of this state and expend funds in connection therewith if such program is compatible with the powers conferred by this article;

(j) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties; and

(k) Enter into contracts for the promotion of sheep and for the development of new markets through such promotion.

(2) The board shall establish a license fee for the purpose of funding the services provided to the sheep industry by the board and for funding the activities of the board performed pursuant to the provisions of this article.

Source: L. 93: Entire article amended with relocations, p. 1842, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-111 as it existed prior to 1993, and the former § 35-57.5-113 was relocated to § 35-57.5-116.

35-57.5-114. Acceptance of grants and gifts. The board may accept grants, donations, contributions, or gifts from any source for expenditures in connection with any purpose consistent with the powers conferred on the board.

Source: L. 93: Entire article amended with relocations, p. 1843, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-112 as it existed prior to 1993, and the former § 35-57.5-114 was relocated to § 35-57.5-118.

35-57.5-115. Rules and regulations. The board is authorized to promulgate regulations necessary to carry out the intent and purposes of this article.

Source: L. 93: Entire article amended with relocations, p. 1843, § 1, effective July 1.

Editor's note: The former § 35-57.5-115 was relocated to § 35-57.5-119.

35-57.5-116. License fee - expenditure of funds. (1) The board shall determine the amount of assessment per head of sheep upon which the annual license fee provided for in section 35-57.5-113 (2) shall be computed. The amount of such assessment shall not exceed fifty cents per head of sheep and shall be set by the board by November 1 of the year prior to the calendar year the license fee is to be charged. In any calendar year, the fee shall not

increase by more than five cents over the amount assessed at the end of the immediately preceding calendar year.

(2) All producers and commercial feeders of sheep in the state shall pay the license fee for each sheep marketed; except that no fee shall be collected on any sheep fed in the state for a period of less than thirty days. The fee shall be collected from such producers and feeders by handlers, who shall remit the proceeds to the authority. The fee shall be payable upon each transfer of the sheep or of any right, title, or interest therein.

(2.5) (a) The operators of feedlots, slaughterhouses, packing plants, and livestock auction markets shall deduct from the proceeds of sale owed by them to the owners of sheep handled at such facilities, and shall promptly remit to the authority, the fees payable under this section. Each payment pursuant to this subsection (2.5) shall be accompanied by a list of the names and addresses of the sheep owners on whose behalf the payment is made and the number of sheep marketed by each such owner.

(b) When the operator of a feedlot, slaughterhouse, packing plant, or livestock auction market sends or gives any written statement to an owner of sheep or to such owner's agent relating to the proceeds owing to the owner, the operator shall include a statement of the amount deducted from such proceeds pursuant to paragraph (a) of this subsection (2.5).

(3) A producer or feeder who, by virtue of his or her activities or circumstances, becomes a handler as defined in section 35-57.5-103 (4) or who sells, ships, or otherwise disposes of sheep to a person not subject to this article shall forthwith remit to the authority an amount equal to the amount of fees that would otherwise have been payable under subsection (2) of this section.

(4) When collected, such license fees shall be paid to the authority and administered by the board for the purposes set forth in this article.

(5) The license fee to defray the costs of this program pursuant to the provisions of this article shall remain in full force and effect from year to year without change unless there is filed with the board a petition signed by at least fifty-one percent of the growers of sheep in the state upon whom the most recent license fee was imposed requesting the repeal of said license fee in total discontinuance of the program or a petition requesting an increase or decrease of said license fee, in which latter case, the board shall fix a new assessment and provide for continuation of the program.

Source: L. 93: Entire article amended with relocations, p. 1843, § 1, effective July 1.
L. 97: (1), (2), and (3) amended and (2.5) added, p. 179, § 4, effective March 31.

Editor's note: This section is similar to former § 35-57.5-113 as it existed prior to 1993.

35-57.5-117. Acts constituting violation. It is a violation of this article for any person to fail to pay or remit to the authority an assessment pursuant to section 35-57.5-116 or to knowingly falsify any document furnished in connection with such a payment or remission.

Source: L. 93: Entire article amended with relocations, p. 1844, § 1, effective July 1.
L. 97: Entire section amended, p. 180, § 5, effective March 31.

Editor's note: This section is similar to former § 35-57.5-113.5 as it existed prior to 1993.

35-57.5-118. Enforcement. (1) The board shall be responsible for the enforcement of this article.

(2) Any assessment levied in such specified amount as may be determined by the board pursuant to the provisions of section 35-57.5-116 shall constitute a personal debt of every person so assessed and shall be due and payable to the authority when payment is called for by the board.

(3) Upon the failure of such person to pay any such assessment upon the date determined by the board, the board may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Whenever it appears to the board, upon sufficient evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or of any order promulgated under this article, the board may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the board shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the board to post a bond.

(5) (a) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the board. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the board is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the board, the board may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the board is found to have lacked substantial justification to impose a civil penalty, the person charged may recover such person's costs and attorney fees from the authority.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the authority, who shall use such funds to defray the costs of the administration of this article.

(f) Before imposing any civil penalty, the board may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) (Deleted by amendment, L. 93, p. 1844, § 1, effective July 1, 1993.)

Source: L. 93: Entire article amended with relocations, p. 1844, § 1, effective July 1.

Editor's note: This section is similar to former § 35-57.5-114 as it existed prior to 1993.

35-57.5-119. Refunds. (1) Unless otherwise specified in this article, there shall be no refunds of assessments.

(2) Any sheep producer or lamb feeder who has paid an assessment as required by section 35-57.5-116 shall be entitled to a prompt refund of seventy-five percent of such assessment from the board. Claim for refund shall be made to the board within thirty days after the date of payment of the assessment or thirty days after the due date of the assessment, whichever is later, on a form furnished by the board.

(3) Notwithstanding any other laws to the contrary and to carry out the intent of this section to insure prompt refund, the board, except as provided by subsection (4) of this section, is authorized to expeditiously process claims for refund. The refund shall be based on the signed statement of the refund claim and any other information that is attached thereto unless other information or verification is required by subsection (4) of this section.

(4) The board, before processing and making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for refund. All persons who forward claims for refund shall keep pertinent records for a period of at least three years, which shall be available for audit by the board. The board may file an action to recover from any person a refund of assessment illegally obtained.

(5) The claim for refund shall be signed by the person who paid the assessment. Any person who files a fraudulent or false claim for refund, or who, by any false pretenses, obtains or attempts to obtain a refund not legally due him, or who signs a refund claim in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished accordingly.

Source: L. 93: Entire article amended with relocations, p. 1845, § 1, effective July 1.
L. 97: (2) amended, p. 180, § 6, effective March 31.

Editor's note: This section is similar to former § 35-57.5-115 as it existed prior to 1993.

ARTICLE 57.8**Colorado Horse Development Board**

35-57.8-101.	Short title.	35-57.8-107.	Duties and powers of the board.
35-57.8-102.	Definitions.	35-57.8-108.	Acceptance of grants and gifts - horse development fund.
35-57.8-103.	Legislative declaration - Colorado horse development authority - creation.	35-57.8-109.	Horse promotion authority assessment.
35-57.8-104.	Colorado horse development authority - board of directors - members - terms.	35-57.8-110.	Collection procedure.
35-57.8-105.	Qualifications of members.	35-57.8-111.	Refunds.
35-57.8-106.	Expenses - rules.		

35-57.8-101. Short title. This article shall be known and may be cited as the “Colorado Horse Development Authority Act”.

Source: L. 95: Entire article added, p. 998, § 1, effective July 1. **L. 98:** Entire section amended, p. 1258, § 2, effective June 1.

35-57.8-102. Definitions. As used in this article, unless the context otherwise requires:
(1) “Authority” means the Colorado horse development authority created by section 35-57.8-103 (2).

(2) “Board” means the board of directors of the Colorado horse development authority created by section 35-57.8-104 (1).

(3) “Commissioner” means the commissioner of agriculture.

Source: L. 95: Entire article added, p. 998, § 1, effective July 1. **L. 98:** Entire section amended, p. 1258, § 3, effective June 1.

35-57.8-103. Legislative declaration - Colorado horse development authority - creation. (1) The general assembly hereby declares that it is in the public interest and welfare that owners of horses be authorized and encouraged to act jointly and in cooperation in stimulating, by research, education, advertising, and other methods, the promotion of the horse industry in the state. It is the intent and purpose of this article to authorize and provide a method and procedure for effectively correlating and encouraging the promotion of horses and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the horse has a long established relationship with the citizens of Colorado and therefore the state is affected with a public interest to ensure the continuation of a stable and expanding horse industry by establishing policies concerning horse promotion in this state and by educating the public concerning the health, care, and welfare of horses.

(2) There is hereby created the Colorado horse development authority that is a body corporate and a political subdivision of the state. The authority is not an agency of state government and is not subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the “Colorado Governmental Immunity Act”, article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

Source: L. 95: Entire article added, p. 998, § 1, effective July 1. **L. 96:** (1)(c) amended, p. 1543, § 138, effective June 1. **L. 98:** Entire section amended, p. 1259, § 4, effective June 1.

35-57.8-104. Colorado horse development authority - board of directors - members - terms. (1) (a) The powers of the authority shall be vested in a board of directors,

which shall be composed of:

- (I) Five representatives of five different horse organizations in this state;
 - (II) One representative of a state horse show association;
 - (III) One representative of a state veterinary association;
 - (IV) One representative of a university equine extension service;
 - (V) Two representatives of an organization that operates statewide to promote and protect the interests of horses and that represents all types of horse uses and horse breeds;
 - (VI) Four representatives of horse industry support services.
- (b) At least two representatives shall be from the western slope.
- (2) The commissioner shall appoint the board members to three-year terms. The terms of no more than five members shall expire on the same year. Each member serves at the pleasure of the commissioner and shall continue in office until the member's successor is appointed and qualified. The members of the board who are in office on September 1, 1998, shall comprise the original board of directors of the authority, and their initial terms on the board shall end at the same time as the terms to which they were appointed on the Colorado horse development board prior to September 1, 1998.
- (3) On the expiration of the term of a member of the board, that member's successor shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy, the commissioner shall appoint a person who shall serve for the unexpired term.

Source: L. 95: Entire article added, p. 999, § 1, effective July 1. L. 98: Entire section amended, p. 1259, § 5, effective June 1.

35-57.8-105. Qualifications of members. (1) Each board member shall meet the following qualifications at the time of appointment and throughout the member's term of office:

- (a) Citizenship of the United States;
- (b) Residency in this state;
- (c) Demonstration of an active interest in the development of the horse industry in Colorado.

(2) The commissioner shall immediately declare the office of any member of the board vacant whenever the commissioner finds that the member is not qualified under this section or that the member is unable to perform the duties of the office.

Source: L. 95: Entire article added, p. 999, § 1, effective July 1.

35-57.8-106. Expenses - rules. Members shall serve without compensation except for their actual and necessary travel and other expenses incurred in the performance of their official duties. Employees of the board may receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The board shall adopt reasonable rules governing the incurrence and payment of expenses.

Source: L. 95: Entire article added, p. 999, § 1, effective July 1.

35-57.8-107. Duties and powers of the board. (1) The board shall:

- (a) Adopt policies concerning horse promotion in this state;
- (b) Adopt an education program concerning the health, care, and welfare of horses;
- (c) Develop, adopt, and implement a process to fund the activities and responsibilities of the board.

(2) The board may:

- (a) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred on the board by this article;
- (b) Enter into contracts that it deems appropriate to carry out the purposes of the board as authorized by this article;

(c) Appoint an advisory committee to assist the board in developing and promoting the horse industry by recommending programs, policies, and structures;

(d) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(e) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the board and enter into contracts with the organizations or agencies for carrying out joint programs;

(f) Provide for conducting and overseeing a horse survey on the economic impact of the horse industry on this state;

(g) Adopt rules as necessary to administer and carry out the intent and purposes of this article.

(3) The board shall contract for the implementation of horse education and promotion programs with a horse industry organization that operates statewide to promote and protect the interests of the horse industry and that represents the interests of all types of horse uses and breeds. The board shall oversee the activities of the organization and the expenditure of moneys by the organization to implement the programs.

Source: L. 95: Entire article added, p. 1000, § 1, effective July 1.

35-57.8-108. Acceptance of grants and gifts - horse development fund. (1) The board may accept grants, donations, contributions, or gifts from any source for expenditures for any purpose consistent with the powers of the board.

(2) The horse development fund is abolished, and any moneys in the fund as of June 30, 1998, shall revert to the general fund.

Source: L. 95: Entire article added, p. 1001, § 1, effective July 1. **L. 98:** (2) amended, p. 1260, § 6, effective June 1.

35-57.8-109. Horse promotion authority assessment. (1) (a) To carry out the provisions and intent of this article, the state board of stock inspection commissioners, by and through the brand commissioner or a designated agent thereof, shall collect an assessment on horses for which a brand inspection fee is also collected as provided in section 35-41-104. The board of directors of the authority shall determine the assessment in an amount not to exceed three dollars per horse. No person shall be assessed more than a total of one hundred dollars in a calendar year.

(b) Any person may purchase a Colorado horse development authority assessment card for one hundred dollars from the authority to provide evidence to the state board of stock inspection commissioners, by and through the brand commissioner or a designated agent thereof, at the time a brand inspection fee is collected as provided in section 35-41-104, that the assessment due pursuant to paragraph (a) of subsection (1) of this section has been collected. Such Colorado horse development authority assessment card shall be valid for a period of one calendar year.

(2) The assessment shall be directly deposited by the livestock inspectors into an account specified by the Colorado horse development authority board. The state board of stock inspection commissioners is authorized to bill the Colorado horse development authority a fee collected pursuant to agreement between the state board of stock inspection commissioners and the Colorado horse development board. Such fee shall not exceed ten percent of the assessment determined by the board pursuant to this section.

Source: L. 98: Entire section added, p. 1260, § 7, effective June 1.

35-57.8-110. Collection procedure. (1) The operators of all stockyards and livestock auction markets shall deduct the assessment from the proceeds of sale owed by them to the respective owners of horses as authorized by section 35-57.8-109.

(2) When an operator sends or gives any written statement to an owner or the owner's agent relating to the proceeds owing the owner, the operator shall include a statement of the amount deducted from the proceeds under section 35-57.8-109.

(3) Operators shall promptly pay to the state board of stock inspection commissioners all assessments collected by them pursuant to subsection (1) of this section.

Source: L. 98: Entire section added, p. 1260, § 7, effective June 1.

35-57.8-111. Refunds. (1) Any person who has paid an assessment at the time of brand inspection as required by section 35-57.8-109 shall, upon request, be entitled to a refund of such assessment from the board within a reasonable time; except that a person who has purchased a Colorado horse development authority assessment card shall not be entitled to a refund pursuant to this section.

(2) Notwithstanding any other laws to the contrary, and to carry out the intent of this section to ensure a refund, the board, except as provided by subsection (3) of this section, is authorized to process claims for refund and may make such refunds without the necessity of verification of payment by the applicant. The refund shall be based only on the signed statement of the refund claim and other information as is contained thereon unless other information or verification is required by subsection (3) of this section.

(3) The board, before processing and making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for refund. The board may file an action to recover from any person a refund of assessments illegally obtained.

(4) A claim for refund shall be signed by the person who paid the contribution. Any person who files a fraudulent or false claim for refund, who, by any false pretenses, obtains or attempts to obtain a refund not legally due such person, or who signs a claim for refund in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished accordingly.

Source: L. 98: Entire section added, p. 1260, § 7, effective June 1.

ARTICLE 57.9

Confidentiality of Livestock Information

Cross references: For the legislative declaration contained in the 2008 act enacting this article, see section 1 of chapter 192, Session Laws of Colorado 2008.

35-57.9-101.	Short title.		redaction - exceptions.
35-57.9-102.	Definitions.	35-57.9-104.	Restrictions on information in databases.
35-57.9-103.	Authority of commissioner to deny access to information -		

35-57.9-101. Short title. This article shall be known and may be cited as the "Livestock Information Security Act".

Source: L. 2008: Entire article added, p. 678, § 2, effective August 5.

35-57.9-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "All-hazards security system" means a comprehensive data management system administered by the department in order to prevent, detect, respond to, mitigate, and manage the recovery of any livestock health and safety issues including, but not limited to, outbreaks of disease and injury sustained as a result of natural disasters. The system may compile and use data from sources including, but not limited to, the United States department of agriculture, geographic information systems and spatial modeling, the United States department of homeland security, the state board of stock inspection commissioners,

the state veterinarian, the livestock industry, and laboratory tests performed by the department or external entities.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Department" means the department of agriculture.

(4) "Livestock" means cattle, sheep, goats, bison, swine, mules, poultry, horses, donkeys, alternative livestock as defined in section 35-41.5-102, and all other bovine, camelid, caprine, equine, ovine, avian, and porcine animals raised or kept for profit.

(5) "Person in interest" has the meaning set forth in section 24-72-202, C.R.S.

Source: L. 2008: Entire article added, p. 678, § 2, effective August 5.

35-57.9-103. Authority of commissioner to deny access to information - redaction - exceptions. (1) The commissioner may deny access to personal information about persons involved with the livestock industry if the commissioner reasonably believes dissemination of such information will cause harm to such persons.

(2) On the grounds that disclosure would be contrary to the public interest, the commissioner may deny access to the following:

(a) Specific operational details of livestock operations that constitute confidential commercial data pursuant to section 24-72-204, C.R.S. Such operational details include ownership, numbers, locations, and movements of livestock; financial information; the purchase and sale of livestock; account numbers or unique identifiers issued by government or private entities; operational protocols; and participation in an all-hazards security system.

(b) Information related to livestock disease or injury:

(I) That would identify a person or location; or

(II) That contains confidential data pursuant to the veterinary-patient-client privilege described in section 24-72-204 (3) (a) (XIV), C.R.S.;

(c) Records of ongoing investigations that pertain to livestock; however, such records shall not be withheld if the investigation has concluded and the person being investigated is found by the commissioner to have violated any provision of this title that pertains to livestock.

(3) If the commissioner denies access to information pursuant to paragraph (a) or (b) of subsection (2) of this section, the commissioner shall redact the confidential information and make the remaining portions of such record available for disclosure. If the commissioner is unable to redact the record within the time limits established in section 24-72-203 (3), C.R.S., such time limits shall be waived and the commissioner shall redact the information and provide the redacted record as soon as is practicable.

(4) Nothing in this article shall be construed to authorize the commissioner to obtain information not otherwise permitted by law.

(5) Nothing in this article shall:

(a) Preclude a person in interest from accessing his or her own information;

(b) Prevent the commissioner from releasing biological livestock samples to authorized external entities for scientific testing, so long as the testing entity agrees to maintain the confidentiality of the information it receives;

(c) Prevent the commissioner from disclosing information that is otherwise permitted or required to be disclosed; or

(d) Apply when the commissioner determines that disclosure of livestock information is necessary to prevent or address an immediate threat to the health and safety of a person or animal.

(6) When disclosing information pursuant to subsection (5) of this section, the commissioner shall release only as much information as is necessary to address the situation.

Source: L. 2008: Entire article added, p. 678, § 2, effective August 5.

35-57.9-104. Restrictions on information in databases. Any database created by the department that contains specific operational details that constitute confidential commercial data pursuant to section 24-72-204, C.R.S., shall not be merged or shared with any state,

federal, or foreign government, industry partner, or other database that would modify the provisions with respect to how specific operational details that constitute confidential commercial data may be disseminated pursuant to section 35-57.9-103. Such data includes ownership, numbers, locations, and movements of livestock; financial information; the purchase and sale of livestock; account numbers or unique identifiers issued by government or private entities; operational protocols; and participation in an all-hazards security system; except that data within any all-hazards security system may be shared for response to or participation in any all-hazards event limited to the scope of each individual all-hazards event and to the scope of only those agencies directly involved in the all-hazards event. As used in this section, “all-hazards event” means the occurrence of any catastrophic event or incident that is either natural, such as a blizzard, fire, flood, tornado, earthquake, or disease outbreak, or man-made and that could be of biological, chemical, radiological, nuclear, or explosive origin.

Source: L. 2011: Entire section added, (HB 11-1111), ch. 88, p. 252, § 1, effective August 10.

MEAT PROCESSING

ARTICLE 58

Meat and Slaughter Plants

35-58-101 to 35-58-110. (Repealed)

Source: L. 89: Entire article repealed, p. 1395, § 5, effective April 12.

Editor’s note: This article was numbered as article 16 of chapter 8, C.R.S. 1963. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 59

Inedible Meat Rendering and Processing Act

35-59-101 to 35-59-113. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1158), ch. 13, p. 33, § 1, effective July 1.

Editor’s note: This article was numbered as article 21 of chapter 8, C.R.S. 1963. This article was added in 1967. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning of page vii in the front of this volume.

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

ARTICLE 60

Commercial Feeding Stuffs

Editor’s note: This article was numbered as article 14 of chapter 8, C.R.S. 1963. This article was repealed and reenacted in 1979 and was subsequently repealed and reenacted in 1999, resulting in the

addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1999, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

35-60-101.	Short title.	35-60-109.	Authority of the commissioner - rules.
35-60-102.	Definitions.	35-60-110.	Enforcement - inspection - sampling - analysis.
35-60-103.	Commercial feed registration - rules.	35-60-111.	Detained feeds.
35-60-104.	Registration fees.	35-60-112.	Penalties.
35-60-105.	Distribution fees - reports.	35-60-113.	Civil penalties.
35-60-106.	Labeling - general requirements - commercial and customer-formula feeds.	35-60-114.	Cooperation with other entities.
35-60-107.	Adulteration and misbranding.	35-60-115.	Publications.
35-60-108.	Prohibited acts.		

35-60-101. Short title. This article shall be known and may be cited as the "Colorado Feed Law".

Source: L. 99: Entire article R&RE, p. 565, § 1, effective January 1, 2000. L. 2007: Entire section amended, p. 991, § 1, effective May 22.

Editor's note: This section is similar to former § 35-60-101 as it existed prior to 1999.

ANNOTATION

Purpose of article. Section 35-60-101 et seq. and § 25-5-401, the pure food and drug act, declare the public policy of Colorado in respect to the protection of the public against the manufacture and sale of food and foodstuffs, includ-

ing livestock feeds, containing deleterious elements or ingredients which cannot be known or determined by the public. *White v. Rose*, 241 F.2d 94 (10th Cir. 1957) (decided prior to 1979 repeal and reenactment).

35-60-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Brand name" means any word, name, symbol, device, or any combination thereof that identifies the commercial feed of a distributor or labeler and distinguishes it from that of other distributors or labelers.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. "Commercial feed" does not include unmixed whole seeds or grains, as identified in the United States grain standards, and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated as described in section 35-60-107. The commissioner by rule may exempt from this definition, or from specific provisions of this article, commodities such as hay, straw, stover, silage, cobs, husks, hulls, meat, and other portions of animal carcasses in their raw or natural state that have not been further processed, except by denaturing, when such commodities are not intermixed with other materials and are not adulterated as described in section 35-60-107.

(3) "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

(3.5) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such person's remuneration is determined wholly or partially by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(5) "Department" means the department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all agents and employees of the department.

(6) "Distribute" means to sell, offer to sell, exchange, barter, supply, furnish, or otherwise provide commercial feed. "Distribute" does not include sales of commercial feed by a contract feeder as a part of a custom feeding agreement.

(7) "Distributor" means any person who distributes commercial feed in this state.

(8) "Drug" means either of the following:

(a) Any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans; or

(b) Any article, other than a feed, intended to affect the structure or any function of an animal's body.

(9) "Feed" means any substance that is intended for use as food for animals other than humans. "Feed" includes commercial feed and feed ingredients.

(9.5) "Feeder" means any person who provides feed directly to any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food. "Feeder" includes a contract feeder.

(10) "Feed ingredient" means a constituent material used in the manufacture of a feed that becomes part of the feed.

(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the immediate container of any feed or on the invoice or delivery slip with which a feed is distributed.

(12) "Labeling" means all labels and other written, printed, or graphic matter upon a feed or any of its containers or wrappers or that accompany the feed or are otherwise published or communicated in any manner by a distributor of such feed.

(13) "Manufacture" means to grind, mix, blend, or further process a feed.

(14) "Noxious weed seed" means the seed produced from plants that have been designated by the commissioner as being noxious due to such plants negative effects on natural and agricultural ecosystems.

(15) "Official sample" means a sample of feed taken by the commissioner in accordance with the provisions of section 35-60-110.

(16) "Person" means an individual, partnership, corporation, limited liability company, cooperative, business trust, business association, or entity.

(17) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

(18) "Quantity statement" means the declaration of the net weight or mass, net volume of liquid or dry material, or count.

(19) "Ton" means a net weight of two thousand pounds.

Source: L. 99: Entire article R&RE, p. 565, § 1, effective January 1, 2000. L. 2007: (3.5) and (9.5) added and (6), (10), (11), (12), and (13) amended, p. 991, § 2, effective May 22.

Editor's note: This section is similar to former § 35-60-102 as it existed prior to 1999.

35-60-103. Commercial feed registration - rules. (1) No person shall manufacture commercial feed within the state, or allow his or her name to appear on the label of a commercial feed as guarantor, without first registering with the department. Such registration shall expire on the date specified by the commissioner by rule and may be renewed annually.

(2) Nothing in this article shall require a person to register with the department to do the following:

(a) Distribute packaged commercial feed in its original package if that feed was packaged and labeled by a registered manufacturer or distributor whose name and address appears on the package label;

(b) Distribute bulk commercial feed that is:

(I) Distributed in the same form, but not necessarily the same quantities, in which it was received from a registered manufacturer or distributor; and

(II) Labeled with the information, except the quantity statement, that was provided by the registered manufacturer or distributor from whom the bulk commercial feed was received;

(c) Manufacture or distribute a customer-formula feed; except that the manufacturer of such customer-formula feed shall:

(I) Distribute such customer-formula feed only to the final purchaser for whom the feed was formulated;

(II) Obtain all commercial feeds used as ingredients in such customer-formula feed from registered manufacturers or distributors; and

(d) Manufacture or distribute commercial feed as an employee of a person registered pursuant to subsection (1) of this section.

Source: L. 99: Entire article R&RE, p. 567, § 1, effective January 1, 2000. L. 2007: (1) and (2)(c)(I) amended, p. 992, § 3, effective May 22.

Editor's note: This section is similar to former § 35-60-103 as it existed prior to 1999.

35-60-104. Registration fees. (1) A person registering with the department pursuant to section 35-60-103 (1) shall submit a form provided by the department that includes the following information:

(a) The name and business address of the registrant;

(b) The address of each business location in this state where the registrant engages in activities for which registration is required under section 35-60-103;

(c) The registration fee required under subsection (2) of this section;

(d) A statement that the distribution fees and feed tonnage report required under section 35-60-105 have been paid and are current;

(e) Other information required by the department.

(2) (a) (I) A person required to be registered pursuant to section 35-60-103 (1) shall pay an annual registration fee as established by the agricultural commission. Except as provided in subparagraph (II) of this paragraph (a), for each fiscal year, commencing on July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(b) Any person who fails to register within fifteen business days after notification of the requirement to register, or any registrant who fails to comply with the registration renewal requirements, shall pay a late fee, as established by the agricultural commission, in addition to the registration fee.

(c) Registration fees collected under paragraph (a) of this subsection (2) are nonrefundable and shall not be prorated for any part of a year.

(d) All fees collected by the department under paragraphs (a) and (b) of this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(e) Registration pursuant to section 35-60-103 (1) is not transferrable between persons or business locations.

(3) The commissioner may at any time request, and the registrant shall provide, copies of labels and labeling to determine compliance with the provisions of this article.

(4) The commissioner, after an administrative hearing pursuant to article 4 of title 24, C.R.S., may deny registration, place a registrant on probation, or restrict, suspend, revoke, or refuse to renew the registration of a person who has violated any provision of this article or any rule of the commissioner promulgated pursuant to this article or falsified any information requested by the commissioner. The commissioner may place conditions that limit production or distribution of a particular feed on the registration of any person found to have violated any provision of this article. Such restriction, revocation, suspension, or

refusal to renew a registration, or the placement of conditions on a registration, may be in addition to or in lieu of penalties or fines imposed by section 35-60-113.

Source: **L. 99:** Entire article R&RE, p. 568, § 1, effective January 1, 2000. **L. 2003:** (2)(a), (2)(b), and (2)(d) amended, p. 1734, § 18, effective May 14. **L. 2005:** (2)(a), (2)(b), and (2)(d) amended, p. 1274, § 17, effective July 1. **L. 2007:** (1)(d), (2)(b), and (4) amended, p. 992, § 4, effective May 22; (2)(a), (2)(b), and (2)(d) amended, p. 1910, § 16, effective July 1. **L. 2010:** (2)(a) amended, (HB 10-1377), ch. 212, p. 923, § 5, effective May 6.

Editor's note: (1) This section is similar to former § 35-60-103 as it existed prior to 1999.

(2) Amendments to subsection (2)(b) by Senate Bill 07-207 and House Bill 07-1198 were harmonized.

(3) Subsection (2)(a)(II)(B) provided for the repeal of subsection (2)(a)(II), effective July 1, 2012. (See L. 2010, p. 923.)

35-60-105. Distribution fees - reports. (1) Except as provided in subsection (5) of this section, distribution fees in an amount established by the agricultural commission shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor, or distributor subject to the following conditions:

(a) No fee shall be paid on a commercial feed if the payment has already been made by a previous distributor. If the fee has not been paid by a previous distributor, the final distributor listed on the label as the manufacturer, guarantor, or distributor shall pay the fee.

(b) No fee shall be paid on customer-formula feeds if the distribution fee has been paid on the commercial feeds that are used as ingredients in the customer-formula feeds. No feed ingredient that is supplied by a farmer or feeder to a manufacturer shall be subject to a fee when used by the manufacturer to produce a customer-formula feed for the farmer or feeder.

(c) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), for each fiscal year, commencing on July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(B) Repealed.

(II) An annual distribution fee per product as established by the agricultural commission shall be paid in lieu of the distribution fee on commercial feed that is distributed in the state only in packages of ten pounds or less.

(d) The minimum total distribution fee paid shall be as established by the agricultural commission.

(2) In the case of a commercial feed that is distributed in the state both in packages of ten pounds or less, and in packages weighing over ten pounds, the distribution fee required pursuant to subsection (1) of this section shall be paid on the commercial feeds distributed in package weights over ten pounds with a minimum distribution fee established by the agricultural commission. The annual flat distribution fee required pursuant to paragraph (c) of subsection (1) of this section shall be paid on the products sold in packages of ten pounds or less.

(3) Each person who is required to pay the distribution fee set forth in subsection (1) of this section shall:

(a) File with the department each year, not later than the due date specified by the commissioner by rule, a statement that sets forth the number of net tons of commercial feeds distributed in the state and any other information required by the commissioner as set forth in rule. Distribution fees that are due in accordance with subsection (1) of this section shall be paid when the annual statement is filed. Distribution fees that have not been remitted to the department by the due date shall be assessed a penalty fee of ten percent of the amount due or a minimum fee established by the agricultural commission, whichever amount is greater, which shall be added to the distribution fees that are due and owed. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(b) Maintain records as may be required by the commissioner to accurately reflect the tonnage of commercial feed distributed in this state, and the commissioner shall have the right to examine such records to verify statements of tonnage.

(4) (a) A distributor who is subject to the distribution fees for small packages of ten pounds or less shall file with the commissioner, along with the annual statement required by paragraph (a) of subsection (3) of this section, a list of all small package items weighing ten pounds or less that are distributed in this state. New products added during the year must be submitted to the commissioner as a supplement to this list before distribution.

(b) If the list required in paragraph (a) of this subsection (4) is not received with the annual statement or by the due date specified by the commissioner, a penalty fee in an amount established by the agricultural commission shall be added to the amount due. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(5) A person other than the manufacturer, guarantor, or distributor may assume liability for payment of the distribution fee pursuant to subsection (1) of this section.

(6) All fees collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 99: Entire article R&RE, p. 569, § 1, effective January 1, 2000. **L. 2003:** IP(1), (1)(c), (1)(d), (2), (4)(b), and (6) amended, p. 1735, § 19, effective May 14. **L. 2005:** IP(1), (1)(c), (1)(d), (2), (3)(a), (4)(b), and (6) amended, p. 1275, § 18, effective July 1. **L. 2007:** IP(1), (1)(a), (1)(b), (1)(c)(I)(A), (1)(c)(II), (1)(d)(I)(A), (1)(d)(II), (2)(a)(I), (2)(b), IP(3), (3)(a), (4), and (5) amended, p. 993, § 5, effective May 22; IP(1), (1)(c), (1)(d), (2), (4)(b), and (6) amended, p. 1911, § 17, effective July 1. **L. 2010:** (1)(c)(I) amended, (HB 10-1377), ch. 212, p. 923, § 6, effective May 6.

Editor's note: (1) This section is similar to former § 35-60-108 as it existed prior to 1999.

(2) Amendments to this section by Senate Bill 07-207 and House Bill 07-1198 were harmonized; except that amendments to subsections (1)(c)(I)(A), (1)(d)(II), and (2)(b) by Senate Bill 07-207 were superseded by House Bill 07-1198.

(3) Subsection (1)(c)(I)(B) provided for the repeal of subsection (1)(c)(I)(B), effective July 1, 2012. (See L. 2010, p. 923.)

35-60-106. Labeling - general requirements - commercial and customer-formula feeds. (1) **Commercial feed label contents.** Except as otherwise specified in rule by the commissioner, a commercial feed must be labeled with the information required in this subsection (1). The information must appear on the label in the following order:

(a) The product name of the commercial feed and its brand name, if any;

(b) If the commercial feed contains any drug, the information required by the commissioner as established by rule;

(c) The statement of purpose as established by the commissioner by rule;

(d) The guaranteed analysis stated in terms established by the commissioner by rule. The guaranteed analysis shall advise the user of the composition of the feed and support claims made in the labeling. In all cases the substances or elements shall be determinable by laboratory methods as published by the international association of official analytical chemists or by other methods acceptable to the commissioner.

(e) The ingredient statement as established by the commissioner by rule. The common or usual name of each ingredient used in the manufacture of the commercial feed shall be listed; except that the commissioner, by rule, may permit the use of a collective term for a group of ingredients that perform a similar function. The commissioner may exempt such commercial feed or any group thereof from the requirement of including an ingredient statement on the label if the commissioner finds that such statement is not necessary to protect consumers.

(f) The use directions and precautionary statements determined by the commissioner by rule as are necessary for the safe and effective use of the commercial feed;

(g) The date of manufacture, processing, packaging, or repackaging or a code that permits the determination of the date;

(h) The name and address of the registered manufacturer or distributor of the commercial feed;

(i) A quantity statement; and

(j) Any other information required by the commissioner as established by rule.

(2) **Customer-formula feed label contents.** The manufacturer of a customer-formula feed shall provide the purchaser of that feed with all of the following information, in writing, when the manufacturer delivers the customer-formula feed to the purchaser:

(a) The name and address of the manufacturer;

(b) The name and address of the purchaser;

(c) The date on which the manufacturer sold or delivered the customer-formula feed to the purchaser;

(d) The name of the customer-formula feed;

(e) The name and net quantity of every commercial feed and every other ingredient used to manufacture the customer-formula feed;

(f) The use directions and precautionary statements determined by the commissioner by rule as are necessary for the safe and effective use of the customer-formula feed. If any commercial feed used in the manufacture of the customer-formula feed is labeled with use directions or precautionary statements, the manufacturer of the customer-formula feed shall provide those use directions and precautionary statements to the purchaser.

(g) If the commercial feed contains any drug, the information required by the commissioner as established by rule. The information shall include, but shall not be limited to, the following:

(I) The purpose of the medication; and

(II) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with established regulation;

(h) A quantity statement; and

(i) A statement on the label or labeling that states "This feed was manufactured according to specific instructions provided by _____ (insert name of person who provided the instructions) and cannot be sold to any other person."

Source: L. 99: Entire article R&RE, p. 570, § 1, effective January 1, 2000. L. 2007: IP(1) amended and (2)(i) added, p. 995, §§ 6, 7, effective May 22. L. 2012: IP(1) amended, (HB 12-1158), ch. 13, p. 33, § 2, effective July 1.

Editor's note: This section is similar to former § 35-60-104 as it existed prior to 1999.

ANNOTATION

This article places duty upon manufacturer not to place upon market adulterated product. White v. Rose, 241 F.2d 94 (10th Cir.

1957) (decided prior to 1979 repeal and reenactment).

35-60-107. Adulteration and misbranding. (1) (a) No person may manufacture or distribute in this state any feed that is adulterated or misbranded.

(b) No person may use any feed that is adulterated for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food.

(2) A feed is adulterated if any of the following apply:

(a) The feed bears or contains any poisonous or deleterious substance that may render the feed harmful to health; except that, if the poisonous or deleterious substance is not an added substance, a feed shall not be considered adulterated under this subsection (2) if the quantity of such substance in the feed does not ordinarily render it harmful to health.

(b) The feed bears or contains any added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of section 406 of the "Federal Food, Drug, and Cosmetic Act", as amended. This paragraph (b) is not applicable to:

(I) A pesticide used according to label directions on a raw agricultural commodity contained in the feed; or

(II) A food additive that complies with 40 CFR 180.

(c) The feed is a raw agricultural commodity and it bears or contains pesticide residue that is unsafe within the meaning of section 408 (a) of the "Federal Food, Drug, and Cosmetic Act", unless all of the following apply:

(I) The pesticide chemical was applied to the raw agricultural commodity according to an exemption or tolerance under section 408 of the "Federal Food, Drug, and Cosmetic Act";

(II) The raw agricultural commodity has been processed by canning, cooking, freezing, dehydrating, milling, or other processing procedure;

(III) The pesticide residue has been removed from the raw agricultural commodity to the greatest extent possible with good manufacturing practices; and

(IV) The pesticide residue concentration of the feed does not exceed the tolerance prescribed for that pesticide in the raw agricultural commodity.

(d) The feed, if fed to an animal, will likely cause any edible product of that animal to contain a pesticide residue that is unsafe within the meaning of section 408 of the "Federal Food, Drug, and Cosmetic Act".

(e) The feed contains any food additive that is unsafe within the meaning of section 409 of the "Federal Food, Drug, and Cosmetic Act".

(f) The feed contains any color additive that is unsafe within the meaning of section 721 of the "Federal Food, Drug, and Cosmetic Act".

(g) The feed contains any new animal drug that is unsafe within the meaning of section 512 of the "Federal Food, Drug, and Cosmetic Act".

(h) The feed contains any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed.

(i) The feed is manufactured, packaged, or held under unsanitary conditions that may contaminate it with filth or make it harmful to health.

(j) The feed is, in whole or in part, the product of a diseased animal or of an animal that has died by a method other than slaughter and such method is unsafe within the meaning of section 402 (a)(1) or (2) of the "Federal Food, Drug, and Cosmetic Act".

(k) The feed container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents harmful to health.

(l) The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the "Federal Food, Drug, and Cosmetic Act".

(m) A valuable constituent of the feed falls below or differs from that which is represented on the feed labeling.

(n) The feed contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to rules promulgated by the commissioner concerning good manufacturing practice to assure that the drug meets the requirements of this article as to safety and has the identity, strength, and meets the quality and purity characteristics that it purports or is represented to possess. In promulgating such rule, the commissioner shall adopt the current good manufacturing practice regulations for type A medicated articles and types B and C medicated feeds established under authority of the "Federal Food, Drug, and Cosmetic Act", unless the commissioner determines that such regulations are not appropriate to the conditions that exist in this state.

(o) The feed contains any germinative noxious weed seeds in amounts exceeding the limits that the commissioner shall establish by rule.

(p) The feed is manufactured or distributed or used as feed in a manner that does not conform with, or contains any substance that is prohibited by, any rules adopted by the commissioner under this article, including, but not limited to, rules pertaining to the prevention of transmissible spongiform encephalopathies.

(3) A feed is misbranded if any of the following circumstances occur:

(a) The feed labeling is false, deceptive, or misleading in any particular;

(b) The feed is sold or distributed under the name of another feed;

(c) The feed labeling violates any provision of this article;

(d) The feed purports to contain or is represented as containing a feed ingredient that does not conform to the definition of that feed ingredient prescribed by rule of the commissioner; or

(e) Any word, statement, or other information required by or under authority of this article or any rule adopted pursuant to this article to appear on the feed label or labeling is not prominently and conspicuously placed on the label and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Source: L. 99: Entire article R&RE, p. 572, § 1, effective January 1, 2000. L. 2007: (1), (2)(a), (2)(i), (2)(k), (3)(d), and (3)(e) amended and (2)(p) added, p. 995, § 8, effective May 22.

Editor's note: This section is similar to former §§ 35-60-105 and 35-60-106 as they existed prior to 1999.

Cross references: For the "Federal Food, Drug, and Cosmetic Act", see Pub.L. 75-717, codified at 21 U.S.C. § 301 et seq.

35-60-108. Prohibited acts. (1) The following acts and the causing thereof are prohibited:

- (a) The manufacture or distribution of any feed that is adulterated or misbranded;
- (a.5) The use of feed that is adulterated for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food;
- (b) The adulteration or misbranding of any feed;
- (c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, that are adulterated;
- (d) The removal or disposal of a feed in violation of section 35-60-111;
- (e) The failure or refusal to register in accordance with section 35-60-104;
- (f) The violation of section 35-60-112 (6);
- (g) The failure or refusal to pay distribution fees and file reports in accordance with section 35-60-105;
- (h) The sale of customer-formula feed to any person other than the person who provided the manufacturing instructions;
- (i) The failure to maintain any records required by this article or any rule promulgated pursuant to this article;
- (j) The failure to comply with any other provision of this article or the rules promulgated pursuant to this article not otherwise specified in this section; and
- (k) The falsification of any information given to the commissioner.

Source: L. 99: Entire article R&RE, p. 574, § 1, effective January 1, 2000. L. 2007: (1)(a), (1)(b), (1)(d), and (1)(g) amended and (1)(a.5), (1)(h), (1)(i), (1)(j), and (1)(k) added, p. 996, § 9, effective May 22.

Editor's note: This section is similar to former § 35-60-107 as it existed prior to 1999.

35-60-109. Authority of the commissioner - rules. (1) The commissioner is authorized to promulgate, amend, and repeal, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., such rules as are specifically required by this article and such other reasonable rules, including any record-keeping requirements and operating requirements, as may be necessary for the efficient enforcement of this article.

(2) In the interest of uniformity, the commissioner shall by rule adopt, unless the commissioner determines that they are inconsistent with this article or are not appropriate to conditions that exist in this state, the following:

(a) The official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials as published in the official publication of such association; and

(b) The regulations promulgated pursuant to the “Federal Food, Drug, and Cosmetic Act”; except that, if the commissioner determines that any of such definitions, terms, and regulations are inconsistent with this article or are not appropriate to conditions in this state, the commissioner shall not adopt them.

(3) Before the commissioner issues, amends, or repeals any rule authorized by this article, the commissioner shall provide notice as required by section 24-4-103, C.R.S.

Source: L. 99: Entire article R&RE, p. 575, § 1, effective January 1, 2000. L. 2007: IP(1) amended, p. 997, § 10, effective May 22. L. 2012: Entire section amended, (HB 12-1158), ch. 13, p. 33, § 3, effective July 1.

Editor’s note: This section is similar to former § 35-60-109 as it existed prior to 1999.

Cross references: For the “Federal Food, Drug, and Cosmetic Act”, see Pub.L. 75-717, codified at 21 U.S.C. § 301 et seq.

35-60-110. Enforcement - inspection - sampling - analysis. (1) For the purpose of enforcing this article and the rules promulgated pursuant thereto, including the determination of whether or not an operation may be subject to this article, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to:

(a) Enter, during normal business hours, any building, structure, land, vehicle, or other premises or property, public or private, within the state, in or on which feeds are manufactured, processed, packed, distributed, transported, stored, disposed of, or used as feed for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food, and to inspect such premises, property, or vehicle and all pertinent equipment, finished and unfinished materials, containers, records, and labeling in or on such premises, property, or vehicle. The inspection may include obtaining samples and the verification of records and production and control procedures as may be necessary to determine compliance with the rules adopted under section 35-60-107 (2) (n) or (2) (p).

(b) (Deleted by amendment, L. 2007, p. 997, § 11, effective May 22, 2007.)

(2) If the commissioner has obtained a sample in the course of an inspection, upon completion of the inspection and prior to leaving the premises, the commissioner shall give to the owner, operator, or agent in charge of the premises a receipt describing the samples obtained.

(3) If the owner, or the owner’s agent, of any building, structure, land, vehicle, or other premises or property described in subsection (1) of this section refuses to admit the commissioner to inspect such premises, property, or vehicle, the commissioner is authorized to obtain from the district or county court for the district or county in which such premises, property, or vehicle is located a warrant to enter and inspect such premises, property, or vehicle and to sample such feeds, feed ingredients, or raw agricultural commodities according to this section prior to entry, inspection, and sampling. The district and county courts of this state are empowered to issue such warrants upon a proper showing of the need for such entry, inspection, and sampling. Any information concerning any methods, records, formulations, or processes that are entitled to protection as trade secrets under the “Colorado Open Records Act”, part 2 of article 72 of title 24, C.R.S., and that are obtained in the course of the inspection or sampling shall be kept confidential.

(4) Sampling and analysis performed pursuant to this section shall be conducted in accordance with methods published by the international association of official analytical chemists or other generally recognized methods.

(5) The commissioner, in determining whether a feed is in violation in any component, shall be guided by the official sample as defined in section 35-60-102 (15) and obtained and analyzed in accordance with subsections (1) and (2) of this section.

(6) The results of all analyses of official samples revealing violations shall be forwarded by the commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicated a commercial feed has been

adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the commissioner shall furnish to the manufacturer a portion of the sample concerned.

Source: **L. 99:** Entire article R&RE, p. 575, § 1, effective January 1, 2000. **L. 2007:** (1), (3), and (5) amended, p. 997, § 11, effective May 22. **L. 2009:** (3) amended, (SB 09-292), ch. 369, p. 1979, § 112, effective August 5.

Editor's note: This section is similar to former § 35-60-110 as it existed prior to 1999.

35-60-111. Detained feeds. (1) **Stop distribution, manufacture, or use as feed.** When the commissioner has reasonable cause to believe any feed is in violation of this article or any rules promulgated pursuant to this article, the commissioner may issue and enforce a written or printed "stop distribution, manufacture, or use as feed" order, warning any distributor, manufacturer, or feeder of the feed not to distribute, use as feed, or dispose of such feed in any manner until written permission is given by the commissioner or the court. The commissioner shall release the feed subject to the order when the applicable provisions and rules have been complied with. If the distributor does not come into compliance within thirty days, the commissioner may begin, or upon request of the distributor, manufacturer, or feeder shall begin, proceedings for condemnation.

(2) **Condemnation and confiscation.** Any feed not in compliance with this article or rules promulgated pursuant to this article are subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the district or county where the feed is located. If the court finds the feed to be in noncompliance with this article or rules promulgated pursuant to this article and orders the condemnation of such feed, it must be disposed of in a manner consistent with the quality of the feed and the laws of this state; except that the court shall not order the disposal of the feed without first giving the distributor or other claimant an opportunity to apply to the court for release of the feed or for permission to process or relabel the feed to bring it into compliance with this article or rules promulgated pursuant to this article.

Source: **L. 99:** Entire article R&RE, p. 576, § 1, effective January 1, 2000. **L. 2007:** Entire section amended, p. 998, § 12, effective May 22. **L. 2012:** Entire section amended, (HB 12-1158), ch. 13, p. 34, § 4, effective July 1.

Editor's note: This section is similar to former § 35-60-111 as it existed prior to 1999.

35-60-112. Penalties. (1) Any person violating any of the provisions of this article or who impedes, hinders, or otherwise prevents, or attempts to prevent, the commissioner or duly authorized agent in the performance of his or her duty in connection with this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, or, upon a subsequent conviction, not less than two hundred dollars nor more than five hundred dollars.

(2) Nothing in this article shall be construed to require the commissioner or agent to:

- (a) Report for prosecution;
- (b) Institute seizure proceedings;
- (c) Issue a "stop distribution, manufacture, or use as feed" order as a result of minor violations of this article or rules promulgated pursuant thereto.

(3) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall allow an opportunity for the alleged violator to present his or her view to the commissioner.

(4) The commissioner may apply to the court for, and the court may issue, an order for a temporary restraining order or injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated pursuant

thereto, notwithstanding the existence of other remedies at law. Such temporary restraining order or injunction shall be issued without the posting of a bond.

(5) Any person who is adversely affected by acts of the commissioner or rules promulgated pursuant to this article may appeal pursuant to the procedures of article 4 of title 24, C.R.S.

(6) Any person who uses to his or her own advantage, or reveals to state officials other than the commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this article, concerning any methods, records, formulations, or processes that are trade secrets and entitled to protection under the law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars, or imprisoned in the county jail for not less than thirty days, or both; except that nothing in this subsection (6) shall be construed to prohibit the commissioner from exchanging information of a regulatory nature with duly appointed officials of the United States or other state governments who are similarly prohibited by law from revealing this information.

Source: L. 99: Entire article R&RE, p. 577, § 1, effective January 1, 2000. L. 2007: (2)(c) and (3) amended, p. 998, § 13, effective May 22.

Editor's note: This section is similar to former § 35-60-112 as it existed prior to 1999.

35-60-113. Civil penalties. (1) (a) Any person who violates any provision of this article or any rule promulgated pursuant thereto may be subject to a civil penalty as determined by the commissioner. Such civil penalty is in addition to and not a substitution for other penalties or remedies set forth in this article.

(b) Before imposing any civil penalty, the commissioner shall consider the severity of the violation, the amount of harm caused by such violation, and the presence or absence of a pattern of similar violations by the distributor.

(c) The maximum civil penalty imposed by the commissioner shall not exceed seven hundred fifty dollars per day per violation.

(2) Before the commissioner imposes any civil penalty, the person charged shall be provided with a notice of the violation and an opportunity for a hearing in accordance with article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

Source: L. 99: Entire article R&RE, p. 578, § 1, effective January 1, 2000. L. 2005: (4) amended, p. 1276, § 19, effective July 1.

Editor's note: This section is similar to former § 35-60-112 as it existed prior to 1999.

35-60-114. Cooperation with other entities. The commissioner may cooperate and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

Source: L. 99: Entire article R&RE, p. 579, § 1, effective January 1, 2000.

Editor's note: This section is similar to former § 35-60-113 as it existed prior to 1999.

35-60-115. Publications. The commissioner shall publish at least annually, in such form as he or she may deem proper and in accordance with the provisions of section

24-1-136, C.R.S., information concerning the sales of commercial feeds, together with such data on their production and use as the commissioner may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses on the label, but the information concerning production and use of commercial feeds shall not disclose the operations of any person.

Source: L. 99: Entire article R&RE, p. 579, § 1, effective January 1, 2000.

Editor’s note: This section is similar to former § 35-60-114 as it existed prior to 1999.

FAIRS

ARTICLE 65

Fairs

Cross references: For permits to discharge fireworks, see § 12-28-103.

PART 1

PART 3

STATE, COUNTY, AND DISTRICT FAIRS

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- 35-65-201 and
- 35-65-202. (Repealed)

PART 1

STATE, COUNTY, AND DISTRICT FAIRS

35-65-100.3. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Authority" means the Colorado state fair authority created by part 4 of this article.
- (2) "Board" means the board of commissioners of the authority.

Source: L. 83: Entire section added, p. 1368, § 1, effective June 2.

35-65-101. Exhibits by counties - agent. For the purpose of promoting and encouraging the organization of agricultural and mechanical fair associations in the state of Colorado, the board of county commissioners of any county in this state, for the purpose of aiding its county in making a display of the agricultural, mineral, and livestock growth and products of its county at the Colorado state fair and industrial exposition held at Pueblo or at any district fair held in any district in this state, may appropriate a sum not exceeding five hundred dollars out of the county treasury for the purpose of having its county suitably represented and may appoint a suitable person as agent to take charge of the county exhibit and represent said county at the Colorado state fair and industrial exposition.

Source: L. 1891: p. 17, § 1. R.S. 08: § 2507. C.L. § 467. CSA: C. 65, § 1. CRS 53: § 54-1-1. C.R.S. 1963: § 54-1-1.

35-65-102. Premiums - commissioners may remit taxes. The boards of county commissioners in this state, for the purpose of encouraging their respective counties in making a suitable display at any fair held in their counties, may offer special premiums for the best display of the products of the soil, the different grades of thoroughbred stock, fruits of all kinds, dairy products, or whatever else is calculated to encourage and promote agricultural pursuits. The boards of county commissioners are authorized to remit the taxes for state and county purposes and the municipal authorities of any city or town to remit the municipal taxes on the property, real and personal, of any agricultural and mechanical fair associations duly organized under the laws of the state of Colorado when said property is actually and exclusively employed for the use and purposes of said fair associations within their respective counties, cities, or towns.

Source: L. 1891: p. 17, § 3. R.S. 08: § 2508. C.L. § 468. CSA: C. 65, § 2. CRS 53: § 54-1-2. C.R.S. 1963: § 54-1-2.

35-65-103. Displays. All universities, colleges, junior colleges, and stations established for experimental purposes may aid and encourage in every way possible complete displays of their respective departments at the annual exhibition of the Colorado state fair and industrial exposition.

Source: L. 1891: p. 18, § 4. R.S. 08: § 2509. C.L. § 469. CSA: C. 65, § 3. CRS 53: § 54-1-3. C.R.S. 1963: § 54-1-3. L. 65: p. 619, § 1.

35-65-104. Annual report of commission - publications. (Repealed)

Source: L. 1891: p. 18, § 5. R.S. 08: § 2510. C.L. § 470. CSA: C. 65, § 4. CRS 53: § 54-1-4. C.R.S. 1963: § 54-1-4 L. 64: p. 136, § 59. L. 83: Entire section repealed, p. 1374, § 19, effective June 2.

35-65-105. State fair and industrial exposition. (1) There is hereby established the Colorado state fair and industrial exposition which shall be held annually at Pueblo, Colorado, for the display of livestock and agricultural, horticultural, industrial, mining,

water conservation, tourist industry, recreational, educational, and scientific facilities, processes, and products of the state of Colorado.

(2) The Colorado state fair shall be designated as the "Colorado state fair and industrial exposition"; except that the legal effect of any statute designating such fair as the Colorado state fair and all rights acquired and obligations incurred prior to April 15, 1965, under such name shall not be impaired by such change of name. The revisor of statutes is hereby directed to make such change in name as specified in this section.

(3) The Colorado state fair and industrial exposition shall be under the direction and supervision of the authority.

(4) to (6) Repealed.

Source: L. 17: p. 481, § 1. C.L. § 477. CSA: C. 65, § 11. L. 53: p. 287, § 1. CRS 53: § 54-1-5. L. 57: p. 368, § 1. C.R.S. 1963: § 54-1-5. L. 65: p. 619, § 2. L. 67: p. 718, § 1. L. 72: p. 547, § 8. L. 82: (2) amended, p. 359, § 21, effective April 30. L. 83: (2) and (3) R&RE and (4), (5), and (6) repealed, pp. 1370, 1374, §§ 3, 19, effective June 2. L. 97: (3) amended, p. 816, § 4, effective June 30.

Cross references: For enforcement of laws by the Colorado state patrol during or in connection with the state fair and industrial exposition, see § 24-33.5-224.

35-65-106. Revolving fund. (Repealed)

Source: L. 25: pp. 193, 194, §§ 1-4. CSA: C. 65, § 13. L. 53: p. 288, § 2. CRS 53: § 54-1-7. C.R.S. 1963: § 54-1-6. L. 83: Entire section repealed, p. 1374, § 19, effective June 2.

35-65-107. State fair fund - lease and use of facilities. (1) The board is authorized to enter into agreements to lease any of the facilities at the Colorado state fair and industrial exposition at Pueblo, Colorado, upon such terms and conditions as shall be approved by the board. The board is further authorized to sponsor any off-season event which it may approve. All moneys received by the board under this section and through any other authorized activities shall be transmitted to the state treasurer and placed in the Colorado state fair authority cash fund, which fund is hereby created in the state treasury. Moneys in said fund shall be for the use, operation, maintenance, and support of the Colorado state fair and industrial exposition, which use shall include the payment of bond obligations in accordance with the provisions of part 3 of this article and, without limitation, other obligations of the board.

(2) Custody of all moneys in the Colorado state fair fund as of June 30, 1997, shall be transferred to the Colorado state fair authority cash fund.

(3) (a) The Colorado state fair authority cash fund shall consist of:

(I) All moneys that may be appropriated thereto by the general assembly;

(II) All other moneys that may be available to it, including the moneys received under subsection (1) of this section; and

(III) All moneys credited to the fund in accordance with section 38-13-116.7 (3), C.R.S.

(b) The moneys in the Colorado state fair authority cash fund shall be subject to annual appropriation and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

Source: L. 49: p. 399, § 1. CSA: C. 65, § 13(1). CRS 53: § 54-1-8. C.R.S. 1963: § 54-1-7. L. 81: Entire section amended, p. 1729, § 1, effective May 13. L. 83: Entire section amended, p. 1370, § 4, effective June 2. L. 89: (1), IP(3)(a), and (3)(a)(II) amended and (2) R&RE, pp. 1412, 1413, §§ 1, 3, 2, effective July 1. L. 97: Entire section amended, p. 816, § 5, effective June 30. L. 2008: (3)(a) amended, p. 865, § 4, effective January 22, 2009.

35-65-107.5. Capital construction and controlled maintenance. (Repealed)

Source: **L. 92:** Entire section added, p. 156, § 1, effective June 3. **L. 97:** Entire section repealed, p. 817, § 6, effective June 30.

35-65-108. Warrants. (Repealed)

Source: **L. 17:** p. 482, § 3. **C.L.:** § 479. **CSA:** C. 65, § 14. **CRS 53:** § 54-1-9. **C.R.S. 1963:** § 54-1-8. **L. 83:** Entire section repealed, p. 1374, § 19, effective June 2.

35-65-109. Authorization of peace officers to preserve order and protect exhibits.

The board of directors or executive committee of any agricultural, horticultural, or stock society of this state is authorized to contract with a city, town, county, or city and county in whose jurisdiction the grounds of said society are located to provide peace officers, as provided in section 16-2.5-101, C.R.S., whose duty it is to preserve order within and around the grounds of said society, to protect the property within said grounds, and to eject all persons who are improperly within the grounds of said society who are guilty of disorderly conduct or who neglect or refuse to pay the fee or observe the rules prescribed by the society. Said peace officers have the same power, during the time said exhibition continues, that a sheriff has by law to keep the peace and, in addition, during such time, may arrest any person for the commission of any offense mentioned in section 35-65-110.

Source: **L. 1887:** p. 23, § 1. **R.S. 08:** § 2517. **C.L.** § 480. **CSA:** C. 65, § 15. **CRS 53:** § 54-1-10. **C.R.S. 1963:** § 54-1-9. **L. 64:** p. 267, § 160. **L. 94:** Entire section amended, p. 947, § 1, effective April 28. **L. 2003:** Entire section amended, p. 1621, § 33, effective August 6.

Cross references: For management and control of the state fair and industrial exposition, see § 35-65-105; for enforcement of laws by the Colorado state patrol during or in connection with the state fair and industrial exposition, see § 24-33.5-224.

ANNOTATION

Resolution restricting fairground solicitation to single booth deemed unconstitutional. A state fair and industrial exposition commission's resolution which regulated solicitation on the fairgrounds to a single rented booth constituted an unconstitutional restriction on a religious organization's freedom of religion by pro-

hibiting the right to distribute literature, to solicit donations, and to discuss their religious beliefs with patrons attending the state fair. *Int'l. Soc'y for Krishna Consciousness, Inc. v. Colo. State Fair & Indus. Exposition Comm'n*, 199 Colo. 265, 610 P.2d 486 (1980).

35-65-110. Penalty. Any person who willfully destroys the property of exhibitors, visitors, or lessees on the fairgrounds, or hinders or obstructs the officers or policemen in the performance of their duties, or wrongfully or maliciously gains admission to the fairgrounds contrary to the rules of said society or without paying the established fees during any fair of said society is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail for not more than thirty days. All fines so imposed and collected under this section shall be paid into the treasury of the county in which such trial is held.

Source: **L. 1887:** p. 24, § 2. **R.S. 08:** § 2518. **C.L.** § 481. **CSA:** C. 65, § 16. **CRS 53:** § 54-1-11. **C.R.S. 1963:** § 54-1-10. **L. 69:** p. 367, § 1.

35-65-111. County fairgrounds. The board of county commissioners of any county in this state is authorized to lease or purchase a tract of land suitable for county fair purposes, which shall be used for that purpose, in order to encourage and promote agricultural, mechanical, industrial, and livestock industries in this state.

Source: L. 15: p. 232, § 1. C.L. § 482. CSA: C. 65, § 17. L. 49: p. 400, § 1. L. 53: p. 285, § 1. CRS 53: § 54-1-12. C.R.S. 1963: § 54-1-11. L. 81: Entire section amended, p. 1729, § 2, effective July 1.

35-65-112. Fairground - manager - lease. The board of county commissioners of any county in this state in its discretion, after the purchase or lease and the improvement of the land for fairground purposes as provided for in section 35-65-111, may appoint some person to look after, operate, and conduct county fairs on said fairgrounds during each year; or the said board of county commissioners may in its discretion rent or lease the said fairgrounds and improvements thereon for such rental and for such term or period of time as it deems reasonable and proper to any corporation not for pecuniary profit duly organized under the laws of the state of Colorado for the purpose of conducting, operating, and holding a county fair for the promotion of all mechanical and industrial products and agricultural, horticultural, livestock, and other products and exhibits and also for the purpose of conducting races, sports, and other entertainment usually given at county fairs.

Source: L. 15: p. 232, § 2. C.L. § 483. CSA: C. 65, § 18. L. 49: p. 400, § 2. CRS 53: § 54-1-13. C.R.S. 1963: § 54-1-12.

35-65-113. County fairgrounds - appropriation. The board of county commissioners of each county in this state has the power each year to appropriate from the county general fund such money as may be necessary for the purpose of purchasing, leasing, and improving the fairgrounds mentioned in sections 35-65-111 and 35-65-112.

Source: L. 15: p. 233, § 3. C.L. § 484. CSA: C. 65, § 19. L. 49: p. 401, § 3. L. 51: p. 299, § 13. L. 53: p. 285, § 2. CRS 53: § 54-1-14. C.R.S. 1963: § 54-1-13.

35-65-114. Appropriation for maintenance. If the board of county commissioners of any county in this state elects to conduct, operate, and manage the annual fair in its county or if it elects to lease the fairgrounds and improvements thereon as provided in this article, it is authorized to appropriate from the county general fund for that purpose the amount of money necessary therefor and for the necessary improvements and repairs of said buildings and fairgrounds, and to keep the same in repair, and to pay all costs and expenses incidental to the conducting and managing for said annual fair in its county.

Source: L. 15: p. 233, § 4. C.L. § 485. CSA: C. 65, § 20. L. 49: p. 401, § 4. L. 51: p. 299, § 14. CRS 53: § 54-1-15. C.R.S. 1963: § 54-1-14.

35-65-115. District and regional fairs. The boards of county commissioners of the various counties, for the purpose of promoting and encouraging regional or district fairs in regions or districts of which their counties are a part, may use such portions of their county fair funds as may be agreed upon by the boards of county commissioners in the various counties in the region or district to establish, operate, and conduct regional fairs at a centrally located point in said district or region. No district or regional fair shall be held on any of the days of each year on which the Colorado state fair and industrial exposition is held.

Source: L. 53: p. 286, § 3. CRS 53: § 54-1-16. C.R.S. 1963: § 54-1-15.

35-65-116. Race meets - dates - licenses - fees. (1) The board is authorized to obtain a license to conduct horse race meets at the Colorado state fair and industrial exposition

pursuant to article 60 of title 12, C.R.S. For the purposes of this section, the limitations in section 12-60-511, C.R.S., shall not apply, and such horse race meets shall be conducted as approved by the Colorado racing commission at said Colorado state fair and industrial exposition during its duration.

(2) In lieu of obtaining a license to conduct a horse race meet, the board is authorized to contract for the conduct of horse race meets at the Colorado state fair and industrial exposition with a private, nonprofit person licensed to conduct horse race meets within forty miles of the state fair grounds, subject to authorization by the Colorado racing commission pursuant to section 12-60-511, C.R.S. The meet and the race days of the meet conducted at the Colorado state fair and industrial exposition shall be in addition to the number of meets and race days permitted the licensee pursuant to section 12-60-603, C.R.S.

Source: **L. 65:** p. 621, § 3. **C.R.S. 1963:** § 54-1-16. **L. 67:** p. 434, § 1. **L. 69:** p. 1088, § 1. **L. 83:** (1) amended and (2) repealed, pp. 1371, 1374, §§ 5, 19, effective June 2. **L. 84:** (2) RC&RE, p. 945, § 1, effective March 26. **L. 93:** Entire section amended, p. 1238, § 11, effective July 1.

PART 2

RACE MEETINGS

35-65-201 and 35-65-202. (Repealed)

Source: **L. 77:** Entire part repealed, p. 293, § 14, effective May 26.

Editor's note: This part 2 was numbered as article 2 of chapter 54, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

REVENUE BONDS

35-65-301. Board may issue revenue bonds. (1) The board may authorize and issue revenue bonds to finance additional facilities for the board and the Colorado state fair and industrial exposition.

(2) Such revenue bonds shall be authorized and issued only by resolution of the board, which resolution shall conform to the requirements of section 35-65-302. Such bonds may be issued only after approval by both houses of the general assembly either acting by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution.

(3) All bonds issued pursuant to the terms of this part 3 shall provide that:

(a) No holder of any such bond may compel the state or any subdivision thereof to exercise its appropriation or taxing power;

(b) The bond does not constitute a debt of the state and is payable from the net revenues from the operation of the additional facilities acquired or provided pursuant to this part 3 and from contributions by nonstate sources for such additional facilities.

Source: **L. 75:** Entire part added, p. 1353, § 1, effective July 14. **L. 83:** (1) and (2) amended, p. 1371, § 7, effective June 2. **L. 89:** (3)(b) amended, p. 1413, § 4, effective July 1. **L. 97:** (2) and (3)(b) amended, p. 817, § 7, effective June 30.

35-65-302. Resolution. (1) Any resolution authorizing the issuance of bonds under the terms of this part 3 shall:

(a) State the date of issuance of the bonds;

- (b) State a maturity date or dates during a period not to exceed thirty years from the date of issuance of the bonds;
- (c) State the interest rate or rates on, and the denomination or denominations of, the bonds;
- (d) State the form of the bond, whether bearer or registered;
- (e) State the medium of payment of the bonds and the place where the bonds will be paid.
- (2) Any resolution authorizing the issuance of bonds under the terms of this part 3 may:
 - (a) State that the bonds are to be issued in one or more series;
 - (b) State a rank or priority of the bonds;
 - (c) Provide for redemption of the bonds prior to maturity, with or without premium.

Source: L. 75: Entire part added, p. 1354, § 1, effective July 14.

35-65-303. Sale of bonds. (1) Any bonds issued pursuant to the terms of this part 3 may be sold at public or private sale.

(2) If bonds are to be sold at a public sale, the board shall advertise the sale in such manner as the board deems appropriate.

(3) Each bond issued pursuant to the terms of this section shall be sold at the price, in the manner, and at such time as the board shall designate. The board may pay any fees, expenses, or commissions which it deems necessary or desirable to accomplish the sale of said bonds. The authority to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other actions necessary to sell and deliver bonds may be delegated to an officer or agent of the authority.

(4) Pending preparation of the actual bonds, interim receipts or certificates may be issued to the purchaser of the bonds in such form and containing such provisions as the board deems appropriate.

Source: L. 75: Entire part added, p. 1354, § 1, effective July 14. **L. 83:** (4) amended, p. 1371, § 8, effective June 2. **L. 89:** (3) amended, p. 1413, § 5, effective July 1.

35-65-304. Negotiability. Notwithstanding any provisions of the law to the contrary, all bonds issued pursuant to this part 3 are negotiable.

Source: L. 75: Entire part added, p. 1354, § 1, effective July 14.

35-65-305. Power to secure bonds. (1) The board, in connection with the issuance of bonds and in order to secure the payment of the bonds and the interest thereon, has the power, by resolution:

(a) To provide that the bonds issued under this part 3 shall be payable from and may be secured by a pledge of and lien on any or all net revenues derived from, and shall be payable from:

(I) Fees, rentals, and other charges for the use of the additional facilities acquired or provided with the proceeds of said bonds or any one or more additional facilities acquired or provided with proceeds of bonds issued pursuant to this part 3; and

(II) Contributions from nonstate sources for such facility or facilities;

(b) To covenant with or for the benefit of the holders of bonds issued under this part 3 that, so long as any of the bonds remain outstanding and unpaid, the board shall prescribe service charges, fees, and rentals and shall revise the same when necessary so that the additional facility or facilities for which the bonds are issued shall always remain self-supporting, with revenues, including donations from nonstate sources for such additional facility or facilities, sufficient:

(I) To provide for all expenses of operation, maintenance, expansion, and replacement of any facilities from which such revenues are derived;

(II) To pay, when due, all bonds and interest thereon; and

(III) To provide reasonable reserves for such purposes.

Source: **L. 75:** Entire part added, p. 1354, § 1, effective July 14. **L. 83:** IP(1) and IP(1)(b) amended, p. 1372, § 9, effective June 2. **L. 89:** (1)(a), IP(1)(b), and (1)(b)(I) amended, p. 1413, § 6, effective July 1. **L. 97:** Entire section amended, p. 817, § 8, effective June 30.

35-65-306. Provision of bond resolution - covenants. (1) A resolution pertaining to issuance of bonds under this part 3 may contain covenants as to:

(a) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(b) The use and disposition of the revenues of the project for which the bonds are to be issued;

(c) Such matters as are customary in the issuance of revenue bonds including without limitation the issuance and lien position of other or additional bonds, payable from the net revenue received for the operation of the additional facilities acquired or provided pursuant to this part 3 and contributions from nonstate sources for such facilities;

(d) Books of account and the inspection and audit thereof.

(2) Any resolution made pursuant to the terms of this part 3 shall be deemed a contract with the holders of the bonds, and the duties of the board under such resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

Source: **L. 75:** Entire part added, p. 1355, § 1, effective July 14. **L. 83:** (2) amended, p. 1372, § 10, effective June 2. **L. 89:** (1)(c) R&RE, p. 1414, § 7, effective July 1. **L. 97:** (1)(c) amended, p. 818, § 9, effective June 30.

35-65-307. Validity of bonds. (1) Bonds issued under this part 3 and bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon have ceased to be officers of the board.

(2) The validity of the bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the construction, acquisition, improvement, reconstruction, or extension of the facilities of the Colorado state fair and industrial exposition financed by the bonds or done in connection therewith.

Source: **L. 75:** Entire part added, p. 1355, § 1, effective July 14. **L. 83:** (1) amended, p. 1372, § 11, effective June 2. **L. 97:** (2) amended, p. 818, § 10, effective June 30.

35-65-308. Prior lien of bonds. (1) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this part 3 shall have a prior and paramount lien on the net revenues of the additional facilities acquired or provided pursuant to this part 3 for which the bonds have been issued and contributions from nonstate sources for such facilities. The board may provide for preferential security for any bonds, both principal and interest, to be issued under this part 3 to the extent deemed feasible and desirable by such board over any bonds that may be issued thereafter.

(2) Bonds of the same issue or series issued under this part 3 shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

Source: **L. 75:** Entire part added, p. 1355, § 1, effective July 14. **L. 83:** (1) amended, p. 1372, § 12, effective June 2. **L. 89:** (1) amended, p. 1414, § 8, effective July 1. **L. 97:** (1) amended, p. 819, § 11, effective June 30.

35-65-309. Board of commissioners of the Colorado state fair authority - bonds.
(Repealed)

Source: **L. 83:** Entire section added, p. 1371, § 6, effective June 2. **L. 97:** Entire section repealed, p. 819, § 12, effective June 30.

35-65-310. Colorado state fair authority board - bonds. On June 30, 1997, any bonds issued pursuant to this part 3 shall become an obligation of the Colorado state fair authority to the same extent that they were an obligation of the board of commissioners of the Colorado state fair authority before said date.

Source: L. 97: Entire section added, p. 819, § 13, effective June 30.

PART 4

- STATE FAIR AUTHORITY

35-65-401. Colorado state fair authority - creation - board - powers and duties.

(1) (a) The Colorado state fair authority, as it existed prior to June 30, 1997, is abolished. There is hereby created the Colorado state fair authority, which is created within the department of agriculture as a division thereof. The Colorado state fair authority shall exercise its powers, duties, and functions under the department of agriculture as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

(b) The function of the Colorado state fair authority is to direct and supervise the Colorado state fair and industrial exposition created pursuant to section 35-65-105.

(2) (a) On June 30, 1997, the existing board of commissioners of the Colorado state fair authority is abolished, and the terms of the members of the board then serving are terminated.

(b) There is hereby created the board of commissioners of the Colorado state fair authority, which shall have eleven members, ten of whom shall be appointed by the governor with the consent of the senate and one who shall be the commissioner of agriculture or his or her designee. At no time shall more than six members of the board be affiliated with the same political party as the governor. Within thirty days after June 30, 1997, the governor shall appoint the initial members of the board. The governor may appoint, as a member of the board, any person who was a member of the board prior to its termination.

(3) Of the ten appointed members of the board, two shall be residents of the county in which the Colorado state fair and industrial exposition is held and, of the remaining eight members, at least one shall be a resident of each of the congressional districts of the state and at least two shall be residents of the western slope of the state.

(4) Of the members first appointed to the board, two members representing congressional districts shall be appointed for terms expiring November 1, 1998; two members representing congressional districts shall be appointed for terms expiring November 1, 1999; one member representing a congressional district, one member representing the county in which the Colorado state fair and industrial exposition is held, and one at-large member shall be appointed for terms expiring November 1, 2000; one member representing a congressional district, one at-large member, and one member representing the county in which the Colorado state fair and industrial exposition is held shall be appointed for terms expiring November 1, 2001. Thereafter, members of the board shall be appointed for terms of four years. Appointments made to the board when the senate is not in session shall be temporary appointments, and the appointees shall serve on a temporary basis until the senate is in session and is able to confirm such appointments. Each member shall hold office until the member's successor is appointed and qualified.

(5) Of the ten appointed members of the board, one shall be a certified public accountant, one shall have expertise in finance through current management-level experience in banking, and one shall have substantial experience in agriculture or in the activities of 4-H clubs.

(6) Any appointed member may be removed for cause at any time during the member's term by the governor. Vacancies on the board shall be filled by appointment by the governor with the consent of the senate for the unexpired terms.

(7) Members of the board shall serve without pay but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.

(8) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

(8.5) All eleven members of the board, including the commissioner of agriculture or his or her designee, shall be voting members of the board. The members of the board shall elect a chair, a vice-chair, and a secretary from among the membership of the board. Board action shall require the affirmative vote of a majority of a quorum of the board.

(9) The board shall:

(a) Provide for the Colorado state fair and industrial exposition, subject to available appropriations by the general assembly;

(b) Enter into any agreements with other agencies of the state government as may be necessary to provide for the Colorado state fair and industrial exposition;

(c) Hire and employ the manager of the Colorado state fair authority in accordance with the provisions of section 35-65-403;

(d) Meet as often as necessary, but not less than once a month;

(e) Repealed.

(f) Accept contributions from nonstate sources for the purpose of financing and supporting the Colorado state fair and industrial exposition;

(f.5) and (g) Repealed.

(h) and (i) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

(j) Adopt rules in accordance with the provisions of article 4 of title 24, C.R.S.;

(k) Submit annual reports in accordance with section 35-65-406;

(l) Perform such other duties as may be required by law.

(9.5) and (10) Repealed.

(11) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

Source: **L. 83:** Entire part added, p. 1368, § 2, effective June 2. **L. 84:** (9)(e) and (9)(h) amended and (9)(i) added, p. 947, § 1, effective April 17. **L. 86:** (1) amended, p. 895, § 2, effective April 17. **L. 86, 2nd Ex. Sess.:** (1) amended, p. 69, § 15, effective August 25. **L. 87:** (4) amended, p. 913, § 28, effective June 15; (10) amended, p. 1092, § 10, effective July 1. **L. 94:** (10) repealed, p. 1250, § 2, effective July 1. **L. 96:** (9.5) added, p. 43, § 1, effective March 20; (1) amended, p. 1544, § 139, effective June 1; (9)(e) and (9)(g) repealed, p. 1221, § 17, effective August 7. **L. 97:** (9.5) amended, p. 1, § 1, effective January 21; (9.5) amended, p. 204, § 1, effective April 7; (1) to (9), (9.5), and (11) amended and (8.5) added, pp. 810, 815, §§ 1, 3, effective June 30. **L. 99:** (9)(f) amended, p. 293, § 1, effective April 14. **L. 2004:** (9)(f) amended, p. 168, § 1, effective March 23; (9)(f.5) added, p. 1263, § 5, effective May 27. **L. 2008:** (9)(f.5) repealed, p. 866, § 5, effective January 22, 2009.

Editor's note: Subsection (9.5)(b) provided for the repeal of subsection (9.5), effective July 1, 1997. (See L. 97, p. 815.)

Cross references: (1) For the legislative declaration contained in the 1996 act repealing subsections (9)(e) and (9)(g), see section 1 of chapter 237, Session Laws of Colorado 1996; for the legislative declaration contained in the 2004 act enacting subsection (9)(f.5), see section 1 of chapter 322, Session Laws of Colorado 2004.

(2) For the "Administrative Organization Act of 1968", see article 1 of title 24.

35-65-402. Retirement plans for employees of authority. (Repealed)

Source: **L. 94:** Entire section added, p. 1251, § 3, effective July 1. **L. 96:** (2)(c) amended, p. 627, § 47, effective July 1; (2)(c) amended, p. 1463, § 12, effective January 1, 1997. **L. 97:** Entire section repealed, p. 820, § 16, effective June 30.

35-65-403. Office of manager of the Colorado state fair authority - creation.

(1) The office of manager of the Colorado state fair authority is hereby created. The board shall appoint a manager of the Colorado state fair authority who shall have knowledge of livestock, agriculture, horticulture, industry, recreation, education, and scientific facilities, processes, and products of the state of Colorado and who shall have experience in fair

management and promotion. The manager shall serve for an indefinite term and shall not hold any other public office but shall devote his or her entire time to the service of the state in the discharge of his or her official duties. The appointment or removal of the manager shall be subject to the provisions of section 13 of article XII of the state constitution and the statutes enacted pursuant thereto. Notwithstanding any law to the contrary, the office of manager of the Colorado state fair authority shall be a position in the senior executive service for purposes of section 24-50-104 (5) (c), C.R.S.

(2) The manager shall be the chief administrative head of the Colorado state fair authority under the direction and supervision of the board and shall have general supervision and control of all activities, functions, and employees of the Colorado state fair authority and shall exercise all necessary powers incident thereto. The manager shall exercise all the powers and functions of the board in the interim of its meetings and shall perform such other duties as may be prescribed by the board or by law.

(3) Any current state fair authority employee who was previously certified under the state personnel system and who is returning to the state personnel system pursuant to this part 4, as amended by House Bill 97-1342, enacted at the first regular session of the sixty-first general assembly, shall be eligible for reinstatement.

Source: **L. 97:** Entire section added, p. 813, § 2, effective June 30. **L. 98:** (1) amended, p. 677, § 6, effective August 5.

35-65-404. Transfer of property. (1) On June 30, 1997, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Colorado state fair authority, as it existed prior to said date, are transferred to the Colorado state fair authority, created in the department of agriculture, and shall become the property thereof.

(2) On and after June 30, 1997, whenever the Colorado state fair authority or the board of commissioners of the Colorado state fair authority, as they existed prior to June 30, 1997, is referred to or designated by any contract or other document in connection with the Colorado state fair and industrial exposition, such reference or designation shall be deemed to apply to the Colorado state fair authority and the board of commissioners of the Colorado state fair authority, created pursuant to section 35-65-401. All contracts entered into by the authority or its board prior to June 30, 1997, in connection with the Colorado state fair and industrial exposition, are hereby validated, with the Colorado state fair authority, created in the department of agriculture, succeeding to all rights and obligations under such contracts.

(3) No suit, action, or other judicial or administrative proceeding lawfully commenced prior to June 30, 1997, or which could have been commenced prior to said date, by or against the Colorado state fair authority, its board of commissioners, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties shall abate by reason of the abolishment of the Colorado state fair authority and its board, as they existed prior to said date, and the creation, in the department of agriculture, of the Colorado state fair authority and the board of commissioners of the Colorado state fair authority.

Source: **L. 97:** Entire section added, p. 813, § 2, effective June 30.

35-65-405. Colorado state fair authority - board of commissioners - enterprise status. (1) The Colorado state fair authority and the board of commissioners of the Colorado state fair authority, created pursuant to section 35-65-401, shall constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the board retains the authority to issue revenue bonds and the Colorado state fair authority receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this subsection (1), the authority and the board shall not be subject to any provisions of section 20 of article X of the state constitution.

(2) For purposes of part 2 of article 72 of title 24, C.R.S., the records of the Colorado state fair authority and the board of commissioners of the Colorado state fair authority shall

be public records, as defined in section 24-72-202 (6), C.R.S., regardless of whether the authority and the board constitute an enterprise pursuant to subsection (1) of this section.

Source: L. 97: Entire section added, p. 813, § 2, effective June 30.

35-65-406. Annual reports. (1) The Colorado state fair authority and its board of commissioners shall make an annual report by October 31 of each year to the governor, the senate agriculture, natural resources, and energy committee, and the house of representatives agriculture, livestock, and natural resources committee. The report shall include the following information for the fiscal year ending in the year the annual report is made and for the fiscal year preceding such fiscal year prepared in a comparison format and in accordance with generally accepted accounting principles:

- (a) A statement of revenues and expenses resulting from:
 - (I) Operation of the annual Colorado state fair and industrial exposition events; and
 - (II) Operation of events on any of the facilities at the Colorado state fair and exposition that are not annual Colorado state fair and industrial exposition events;
 - (b) A statement of the financial position of the Colorado state fair and industrial exposition as of June 30 of each such fiscal year;
 - (c) A statement of outstanding revenue bonds issued by the board, including evidence of compliance with applicable bond covenants;
 - (d) A statement of cash flow for the Colorado state fair and industrial exposition;
 - (e) A summary of attendance for the Colorado state fair and industrial exposition;
 - (f) The number of annual Colorado state fair and industrial exposition events and the number of events operated on any of the facilities of the Colorado state fair and industrial exposition that were not Colorado state fair and industrial exposition events; and
 - (g) A statement of revenues and expenses resulting from the operation of the annual Colorado state fair and industrial exposition for the most recent period ending September 30, including a summary of attendance.
- (2) The annual report submitted pursuant to this section shall include any recommendations for change in the statutes that the board or manager deems necessary or desirable, including but not limited to any change to part 14 of article 30 of title 24, C.R.S., and the "Procurement Code", articles 101 to 112 of title 24, C.R.S., necessary or desirable due to the unique nature of the Colorado state fair and industrial exposition.
- (3) The report shall be public.

Source: L. 97: Entire section added, p. 813, § 2, effective June 30. **L. 99:** Entire section amended, p. 18, § 1, effective February 26. **L. 2002:** IP(1) amended, p. 879, § 12, effective August 7. **L. 2003:** IP(1) amended, p. 2014, § 111, effective May 22.

35-65-407. Warrants. The controller is authorized to draw and the state treasurer to pay warrants upon all the funds appropriated from the Colorado state fair authority cash fund, created pursuant to section 35-65-107 (1), on the order of the board, signed by its chair and countersigned by its secretary.

Source: L. 97: Entire section added, p. 813, § 2, effective June 30.

35-65-408. Applicability of other laws. (1) Notwithstanding any law to the contrary:

- (a) Until March 1, 1998, the Colorado state fair authority shall not be subject to the provisions of part 14 of article 30 of title 24, C.R.S. On and after March 1, 1998, the Colorado state fair authority shall be subject to the provisions of part 14 of article 30 of title 24, C.R.S.; and

- (b) The Colorado state fair authority shall not be subject to the provisions of the "Procurement Code", articles 101 to 112 of title 24, C.R.S.

(2) (Deleted by amendment, L. 99, p. 293, § 2, effective April 14, 1999.)

Source: L. 97: Entire section added, p. 813, § 2, effective June 30. **L. 98:** Entire section amended, p. 9, § 1, effective February 27. **L. 99:** Entire section amended, p. 293, § 2, effective April 14.

SOIL CONSERVATION

Conservation Districts

ARTICLE 70

Conservation Districts

35-70-101.	Short title.	35-70-110.	Appeals to state board.
35-70-102.	Legislative declaration.	35-70-111.	Certify assessments or tax.
35-70-102.5.	Legislative declaration - change of name - continuity of existence.	35-70-112.	Failure to observe ordinances. (Repealed)
35-70-103.	State conservation board - composition - powers.	35-70-113.	Boards of appeals. (Repealed)
35-70-104.	Petition for organization of district - qualified electors.	35-70-114.	Land use ordinances - violations. (Repealed)
35-70-104.1.	Mobile home ownership - elections and petitions.	35-70-115.	Additions and withdrawals.
35-70-105.	Hearing on petition - election.	35-70-116.	County agents.
35-70-106.	Creation of district - certification.	35-70-117.	Counties to cooperate.
35-70-107.	Board of supervisors - election - term.	35-70-118.	Dissolution - procedure - conservation fund.
35-70-108.	Powers and duties of districts.	35-70-119.	Consolidation of districts.
35-70-109.	Assessments - amendments to bylaws.	35-70-120.	Change of name.
		35-70-121.	Cooperation between districts.
		35-70-122.	Contributions for purposes of inclusion of conservation districts in the risk management fund.

35-70-101. Short title. This article shall be known and may be cited as the “Colorado Soil Conservation Act”.

Source: L. 37: p. 1170, § 2. **CSA: C. 149A,** § 2. **L. 41:** p. 688, § 1. **CRS 53:** § 128-1-2. **C.R.S. 1963:** § 128-1-2.

35-70-102. Legislative declaration. The general assembly finds and declares that the state of Colorado, through wind and water erosion and depletion of subsurface water resources, has lost for agricultural and livestock uses approximately six million acres, or one-tenth of the total area of the state; that these losses range from severe damage to complete destruction of the topsoils of these areas; that these losses have been caused by improper farm and range practices, by increasing the rate of withdrawal from underground water reserves without adequate attention to recharging such reserves, and by failure to conserve to the full the precious rainfall and snowpacks that could help replenish underground water reserves, and that the areas of land thus destroyed will increase until and unless a constructive method of land use providing for the conservation and preservation of natural resources, including adequate underground water reserves, the control of wind and water erosion, and the reduction of damage resulting from floods, is established by law over the entire state. It is to accomplish this purpose and to insure the health, prosperity, and welfare of the state of Colorado and its people that this article is created, and it shall be construed liberally in order that the purposes expressed in this article may be accomplished.

Source: L. 37: p. 1169, § 1. **CSA: C. 149A,** § 1. **L. 41:** p. 688, § 1. **CRS 53:** § 128-1-1. **L. 55:** p. 847, § 1. **C.R.S. 1963:** § 128-1-1.

ANNOTATION

Law reviews. For article, "Group Action for Range Control in the Northern Great Plains", see 13 Rocky Mt. L. Rev. 199 (1941). For article, "Legal Classification of Special District

Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Applied in *Olinger v. People*, 140 Colo. 397, 344 P.2d 689 (1959).

35-70-102.5. Legislative declaration - change of name - continuity of existence.

(1) The general assembly hereby finds and declares that:

(a) Upon creation in this article, the name "soil conservation district" best reflected the activities of such districts throughout this state;

(b) To better reflect the current activities of the soil conservation districts in this state, each such district should be referred to as a "conservation district"; and

(c) The name of the state board governing all such districts should accordingly be changed from the "soil conservation board" to the "conservation board".

(2) (a) On and after July 1, 2002, the conservation board shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the soil conservation board prior to July 1, 2002, and all employees of the soil conservation board shall be transferred to the conservation board and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(b) On July 1, 2002, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the soil conservation board are transferred to the conservation board and shall become the property thereof.

(c) Whenever the soil conservation board is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the conservation board. All contracts entered into by the soil conservation board prior to July 1, 2002, are hereby validated, with the conservation board succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the conservation board for the payment of such obligations.

(d) Each soil conservation district duly organized pursuant to this article prior to July 1, 2002, is hereby recognized as a duly organized conservation district, and its existence shall be deemed to have been continuous. Whenever a soil conservation district is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the conservation district. All contracts entered into by such soil conservation district prior to July 1, 2002, are hereby validated, with the conservation district succeeding to all the rights and obligations of such contracts.

(3) On and after July 1, 2002, when any provision of the Colorado Revised Statutes refers to the soil conservation board or to a soil conservation district, said law shall be construed as referring to the conservation board or to a conservation district, respectively. The revisor of statutes is authorized to change all references in the Colorado Revised Statutes to the soil conservation board and to soil conservation districts to refer to the conservation board and conservation districts.

Source: L. 2002: Entire section added, p. 512, § 1, effective July 1.

35-70-103. State conservation board - composition - powers. (1) (a) There is hereby created in the department of agriculture the state conservation board, referred to in this article as the "state board", which shall consist of nine members. One member shall be a qualified elector of the state appointed by the governor from the state at large for a term commencing January 1, 1974. The remaining eight positions on the state board shall be filled by elections held within the areas described in this section. The boards of supervisors of local conservation districts within each such area shall elect the number of members specified in this subsection (1) between November 1 and December 31 in 1973 for terms

commencing January 1, 1974, and within such dates in succeeding years as necessary to fill expiring terms. A candidate shall be or shall have been an elected supervisor of a local conservation district. The number of members to be elected and the areas from which they are to be elected are as follows:

- (I) The White-Yampa and North Platte river watersheds, one member;
- (II) The San Juan basin, one member;
- (III) The Arkansas river watershed, two members, one from the upper Arkansas river watershed and one member from the lower Arkansas river watershed;
- (IV) The Rio Grande watershed, one member;
- (V) The Republican and South Platte river watersheds, two members, one from the upper South Platte river watershed and one member from the Republican river and lower South Platte river watersheds;
- (VI) The Colorado, Gunnison, and Dolores river watersheds, one member.

(b) The state board created in paragraph (a) of this subsection (1) shall, on and after July 1, 2000, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the former state board in the department of natural resources. On July 1, 2000, all employees of the former state board whose principal duties are concerned with the duties and functions transferred to the state board created in paragraph (a) of this subsection (1) and whose employment in the former state board is deemed necessary by the commissioner of agriculture to carry out the purposes of this article shall be transferred to the state board created in paragraph (a) of this subsection (1) and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 2000, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the former state board in the department of natural resources pertaining to the duties and functions transferred to the state board in the department of agriculture shall become the property of the state board created in paragraph (a) of this subsection (1).

(d) All contracts entered into by the former state board prior to July 1, 2000, in connection with the duties and functions transferred to the state board, created in paragraph (a) of this subsection (1), are hereby validated. Any appropriations of moneys for the fiscal year beginning July 1, 2000, and from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the state board created in paragraph (a) of this subsection (1) for the payment of such obligations.

(e) All rules, regulations, rates, orders, agreements, and awards of the state board lawfully adopted prior to July 1, 2000, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) At the first regular meeting of the state board in 1974, the nine elected and appointed members of the state board shall by lot determine which three shall hold office for terms of three years, which three for terms of two years, and which three for terms of one year. Thereafter, all such elected and appointed members shall hold office for terms of four years.

(3) (a) Any vacancies occurring in the elective positions on the state board shall be filled by the board by the appointment of a person who would be qualified to stand for election for the board and who is from the same area in which the vacancy occurred, and such appointee shall hold office until the expiration of the term of the office to which he was appointed.

(b) The director of extension work, the director of the state experiment station, the commissioner of agriculture, and the executive director of the department of natural resources shall serve in an advisory capacity to the state board at its request.

(4) Members of the state board shall serve without pay except for their actual traveling and living expenses while on official business of the state board.

(5) The state board has the following powers and duties:

(a) To promote and assist in the organization of conservation districts in any section of the state where erosion damage exists or is threatened;

(b) To accept petitions for the organization of conservation districts and to examine such petitions, determine their sufficiency, and find whether, in its judgment, the organization of such districts is required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people. If, in the opinion of the state board, it is for the best interests of the state that such districts be organized, it shall proceed to hold a hearing and call an election of the landowners within such proposed district, as provided in section 35-70-105.

(c) To prepare and present to the qualified voters uniform bylaws for the conduct of the business of such districts; but, before such bylaws become effective as to any district, they shall first be approved by the qualified voters within each district. Any bylaws so presented and approved shall be consistent with all the provisions of this article.

(d) To act in an advisory capacity with the board of supervisors of each district and to coordinate the programs of all conservation districts;

(e) To act as the state board of appeals;

(f) To prepare a uniform and adequate system of accounting for districts, which may be adopted and used by all districts within the state;

(g) To administer and disburse any funds that may be made available to the state board for the purpose of assisting conservation districts in the conservation of soil and water resources of the state of Colorado and to defray expenses of the state board and its duly appointed or employed agents in carrying out the provisions of this article;

(h) To loan money to conservation districts to assist such districts in furthering the purposes of this article, such loans to be in such amounts and for such terms as the state board may prescribe by rule in order to fully protect the funds and interest of the state board.

(6) In addition to the powers and duties granted to the state board in other sections of this article, the board has the following powers and duties:

(a) To undertake studies of watershed planning and to undertake development of watershed flood prevention and underground water storage projects, both on its own initiative and in response to requests submitted to the board by one or more soil or water conservation districts, flood prevention or control districts, boards of county commissioners, municipalities, drainage or irrigation districts, or other legally constituted bodies having authority under state law to carry out, maintain, and operate the works of improvement;

(b) To hold public hearings at any point within or without each proposed watershed for the purpose of determining the extent of public interest, the degree of anticipated cooperation, and any other data and information needed by the state board in making decisions as to each project;

(c) To plan, in cooperation with the United States government or any of its agencies, the state of Colorado or any of its political subdivisions, and private individuals or corporations, conservation districts, and others, watershed improvement, underground water storage and flood prevention projects, conservation and erosion control practices, and other projects not inconsistent with this article;

(d) Within the limits of available funds, to administer, direct, and operate such watershed improvement, underground water storage and flood prevention projects, conservation and erosion control projects, and other similar activities;

(e) To administer and expend funds made available to the state board by the United States government or any of its agencies or by the state of Colorado or any of its political subdivisions or funds derived from any other source for the purpose of planning, developing, and putting into operation practices and projects undertaken in accordance with this subsection (6);

(f) To obtain options upon and to acquire, or acquire control of, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this article;

(g) To erect suitable structures and maintain any facilities, so as to arrest or prevent the erosion of soils or lands, to improve the watershed and prevent floods, and to increase underground water reserves, with due consideration to established water rights;

(h) To accept grants, services, and materials and to borrow money from the United States or from any corporation or agency created or designed by the United States to lend or grant money, or from the state of Colorado or any of its subdivisions, or from any other source; but in no event shall the state board pledge the faith or credit of the state of Colorado or any county or other political subdivision. In connection with such grants or loans, it may enter into such agreements or contracts as may be required for such purposes.

(i) To report annually at such times and on such matters as the commissioner of agriculture may require. Publications circulated in quantity outside the executive branch are subject to the approval and control of the commissioner of agriculture.

(j) To place any funds it receives pursuant to paragraph (e) of this subsection (6) into a trust and to administer and expend any moneys in such trust.

Source: L. 37: p. 1170, § 3. CSA: C. 149A, § 3. L. 41: p. 689, § 1. L. 45: p. 624, § 1. L. 49: p. 663, § 1. CRS 53: § 128-1-3. L. 55: p. 848, § 2. L. 59: p. 709, § 1. C.R.S. 1963: § 128-1-3. L. 64: p. 172, § 140. L. 73: p. 1353, § 1. L. 77: (5)(e) amended, p. 289, § 68, effective June 29. L. 82: (1)(c) and (1)(e) amended and (6)(j) added, p. 527, §§ 1, 2, effective January 1, 1983. L. 2000: (1) and (6)(i) amended, p. 558, § 8, effective July 1. L. 2002: IP(1)(a), (5)(a), (5)(d), (5)(g), (5)(h), and (6)(c) amended, pp. 515, 519, §§ 8, 17, effective July 1. L. 2011: (2) amended, (HB 11-1040), ch. 47, p. 123, § 1, effective August 10.

35-70-104. Petition for organization of district - qualified electors. (1) Proceedings to determine whether or not a conservation district shall be organized shall be instituted by a petition addressed to the state board and signed by not less than twenty-five percent of the owners of land within the district and who own not less than half of the area to be included within the proposed district. A determination after hearing by the state board that the requisite number of landowners have signed such petition and that such petition has been signed by landowners who own not less than half of the area to be included within the proposed district shall be final and conclusive unless objection is made to the sufficiency of such petition and appeal is taken from the determination of the board.

(2) The petition shall include:

- (a) The name of the proposed district;
- (b) Two maps or plats showing the boundaries of the proposed district;
- (c) Narrative statement giving the legal description of the area to be included within the proposed district by legal subdivisions or by metes and bounds;
- (d) Brief statements of the character of the lands within the boundaries of the proposed district and the need for the establishment of such district.

(3) Every person who is a qualified elector of this state and who owns land within the proposed or existing district is entitled to vote at any election of a proposed or existing district on any matter concerning the organization, operation, consolidation, or dissolution of such district.

(4) (a) (I) A “qualified voter” or “qualified elector”, as referred to in this article, means any registered voter or corporation owning land within the proposed or existing district, as shown by the records in the office of the appropriate county clerk and recorder, and any heir or devisee of such land of a deceased landowner.

(II) (A) A landowner who is a qualified voter or qualified elector as defined in this paragraph (a) may authorize a family member who is a registered voter and a renter or manager of the land to vote in an election on behalf of such landowner.

(B) Authorization pursuant to this subparagraph (II) shall be made prior to every election of the district.

(b) A corporation owning land within a proposed or existing district is entitled to vote if such corporation duly authorizes an agent to vote in the election in its behalf.

Source: L. 37: p. 1171, § 4. CSA: C. 149A, § 4. L. 41: p. 689, § 1. L. 45: p. 624, § 2. L. 49: p. 665, § 2. CRS 53: § 128-1-4. C.R.S. 1963: § 128-1-4. L. 73: p. 1354,

§ 2. **L. 82:** Entire section R&RE, p. 528, § 3, effective January 1, 1983. **L. 95:** (4) amended, p. 306, § 1, effective July 1. **L. 2002:** (1) amended, p. 519, § 18, effective July 1.

ANNOTATION

Soil erosion district, although its purposes are of private nature, is public corporation. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

35-70-104.1. Mobile home ownership - elections and petitions. Notwithstanding any other provision of this article to the contrary, for all elections and petitions that require ownership of real property or land, a mobile home as defined in section 38-12-201.5 (2) or 5-1-301 (29), C.R.S., or a manufactured home as defined in section 42-1-102 (106) (b), C.R.S., shall be deemed sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

Source: **L. 82:** Entire section added, p. 546, § 7, effective January 1, 1983. **L. 94:** Entire section amended, p. 706, § 11, effective April 19; entire section amended, p. 2567, § 82, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1276, § 44, effective June 5.

Editor's note: Amendments to this section by Senate Bill 94-092 and Senate Bill 94-001 were harmonized.

35-70-105. Hearing on petition - election. (1) Within sixty days after it receives a petition, the state board shall cause notice by publication to be made of the pendency of the petition. Such notice shall state:

(a) That a petition has been filed for the organization of a conservation district and the name of the proposed district;

(b) The date (not less than twenty days from the date of such notice), hour, and place that a hearing will be had to determine the sufficiency of the petition and the necessity and advisability of the formation of the proposed district;

(c) That said petition, map, or plat of the proposed district and related material are on file and may be seen and examined by any interested person at the office of the county clerk and recorder of each county in which the proposed district is located and the office of the state board or other designated place within the period between the date of the notice and the date of the hearing;

(d) That anytime after the filing of the petition for the organization of a conservation district, but no later than five days before the day fixed for the hearing thereon, the owner of any real property within the proposed district may file a petition with the state board stating reasons why said property should not be included therein and requesting that said real property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The state board shall hear said petition and all objections thereto at the time of the hearing on the petition for organization and shall determine whether, in the best public interest, said property should be excluded or included in the proposed district.

(2) If on hearing, in the opinion of the state board, the petition or map or plat is insufficient, the papers shall be returned to the petitioners for amendment. If, in the opinion of the state board, the organization of the district is not required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people, it shall so advise the petitioners, and the district shall not be organized, but subsequent petitions covering the same or substantially the same territory may be filed after six months have expired from the date of denial of any such petition, and new hearings shall be held and determinations made thereon.

(3) If it appears upon hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice has been given or to exclude

territory within the district as proposed by the petition, the state board shall determine and define by metes and bounds or by legal subdivisions the boundaries of the proposed district, making such inclusions and exclusions as may be determined desirable. The proposal to include territory within which due notice has not been given shall be considered only at an adjourned hearing to be held after due notice thereof has been given throughout the entire area considered for inclusion in the district and such adjourned hearing held.

(4) If, following the hearing, it is the opinion of the state board that the petition and accompanying map or plat are sufficient and it appears that the organization of the proposed district is feasible and practicable and is required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people, the state board shall make and record such determination.

(5) (a) If it is determined that the petition and the map or plat are sufficient and the proposed district is necessary, the state board shall call an election. The state board shall select the date, time, and place for the holding of the election, such date to be not less than twenty days nor more than forty days from the time the state board's determination becomes final.

(b) The state board shall give notice by publication of the date, time, and place of such election, together with a statement of the matters which will be considered at the election. This notice shall also describe the outer boundaries of the proposed district and any exclusions of land within such boundaries, state that the qualifications of voters shall be as described in section 35-70-104 (3), state that the petition is on file at the office of the county clerk and recorder, and state the procedures for nominating supervisors and the place where absent voters' ballots can be obtained. Such publication shall be made not less than ten days nor more than thirty days before the date of such election.

(c) At such election the qualified voter shall vote for or against the organization of the conservation district.

(d) The state board shall conduct the proceedings of the election provided for in this subsection (5) and shall be the judge of all matters in connection therewith. It has the authority to appoint one or more of its own members or other proper persons to act for it and in its stead in such matters. After the organizational election, all subsequent elections and administrative actions concerning the operation of the district, except as otherwise provided in this article, shall be conducted as provided in the local district's bylaws.

(e) (I) If the canvass of votes at any organization election discloses that one-half or more of the votes cast are against organization of the district, the result of the election shall be recorded in the minutes of the state board, and the proposal shall be dismissed. If the canvass discloses that more than one-half of the votes cast are for the organization of the district, the result shall be recorded in the minutes of the state board, and the board shall proceed as provided in section 35-70-106.

(II) The candidates, according to the number of supervisors to be elected, receiving the most votes cast shall be elected. The supervisors elected shall take office upon the taking of an oath and, if required by the state or local board, the filing of a bond in the same manner as specified in section 32-1-901, C.R.S. Failure to take the oath or furnish a bond, if required, except for good cause shown, shall create a vacancy in the office, and the vacancy shall be filled by the next candidate receiving the highest number of votes in the case of a new district or by the remaining supervisors as specified in section 35-70-107 (4).

(6) For the purposes of this section, "publication" means printing, once a week for two consecutive weeks, by two publications in one newspaper of general circulation in the proposed conservation district if there is such a newspaper, and, if not, then in a newspaper in the county in which the proposed conservation district is located. It is not necessary that publication be made on the same day of each week.

(7) (a) Except as may be otherwise provided in this article, the state board and each local district board of supervisors in the conduct of all elections shall follow, as much as practicable, the election procedures set forth in part 8 of article 1 of title 32, C.R.S.

(b) Whenever reference is made to the secretary or board of a special district, it shall be deemed to mean the secretary or board of supervisors of the local district or state board, as applicable.

Source: **L. 37:** p. 1172, § 5. **CSA:** C. 149A, § 5. **L. 41:** p. 691, § 1. **L. 45:** p. 627, § 3. **L. 49:** p. 667, § 3. **CRS 53:** § 128-1-5. **L. 55:** p. 849, § 3. **C.R.S. 1963:** § 128-1-5. **L. 65:** p. 1058, § 1. **L. 82:** (1) and (5) to (7) R&RE, p. 528, § 4, effective January 1, 1983. **L. 95:** (7)(a) amended, p. 1108, § 52, effective May 31. **L. 96:** (7)(a) amended, p. 1476, § 39, effective June 1. **L. 2002:** (1)(a), (1)(d), (5)(c), and (6) amended, p. 520, § 19, effective July 1.

ANNOTATION

Board's decision final and conclusive if irregularity of petition not questioned. Where four months elapsed after the board determined that the petition for the creation of a district was sufficient before any assertion or claim was

made as to the irregularity of the petition, the right to make such assertion or claim was forfeited and the decision of the board was final and conclusive. *Friesen v. People ex rel. Fletcher*, 118 Colo. 1, 192 P.2d 430 (1948).

35-70-106. Creation of district - certification. Within sixty days after the holding of such election, if more than a majority of the votes cast are for organization of such proposed district, the state board shall certify to the division of local government in the department of local affairs a statement of such election and the result thereof, together with a map or plat showing the area included within such district. The director of said division shall thereupon execute and deliver to the state board a certificate declaring the area within the boundaries of such district to be a lawful conservation district under its name as shown in the records, and thereafter such district shall be a public body corporate and a political subdivision of the state of Colorado and shall have all the powers and duties imposed upon such districts under the provisions of this article. Because the district is a political subdivision of the state, the property of such district, both real and personal, shall be exempt from taxation pursuant to section 4 of article X of the state constitution.

Source: **L. 37:** p. 1176, § 6. **CSA:** C. 149A, § 6. **L. 41:** p. 694, § 1. **L. 49:** p. 672, § 4. **CRS 53:** § 128-1-6. **C.R.S. 1963:** § 128-1-6. **L. 73:** p. 1354, § 3. **L. 76:** Entire section amended, p. 604, § 25, effective July 1. **L. 82:** Entire section amended, p. 530, § 5, effective January 1, 1983. **L. 2002:** Entire section amended, p. 520, § 20, effective July 1. **L. 2007:** Entire section amended, p. 826, § 1, effective May 14.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

35-70-107. Board of supervisors - election - term. (1) (a) (I) The governing body of the district shall consist of a board of supervisors, referred to in this article as "supervisors", who shall be elected by the qualified electors of the district at an election conducted as provided in section 35-70-105. Each board shall consist of not less than five and not more than eleven supervisors, which number shall be specified in the bylaws of the district.

(II) At least sixty-six percent of the supervisors of each district shall be agricultural producers who are landowners in the district; except that, if the district cannot find the requisite percentage of agricultural producers, the district may petition the state board for an exemption from the percentage requirement.

(III) Each supervisor shall serve for a term of four years; except that each district's board shall provide for the staggering of supervisory terms so that the terms of no more than a simple majority of supervisors expire at any one time. Supervisors serving on July 1, 1995, shall continue to serve the terms for which they were elected or appointed.

(b) Subject to the provisions of paragraph (a) of this subsection (1), no one shall be eligible to become a candidate for election as a member of the board of supervisors of any such district unless such person is a landowner in and a qualified elector of the district,

including a renter or manager of the landowner's land pursuant to section 35-70-104 (4), or the duly authorized representative of a corporation owning lands within the district.

(2) The business of the district shall be transacted by the supervisors as provided in this article and in the district's bylaws. All special and regular meetings of the board of supervisors shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (2) governing the location of meetings may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (2) and further stating the date, time, and place of such meeting.

(3) Members of the board of supervisors shall be entitled to travel and other expenses necessarily incurred in the discharge of their duties, such reimbursement to be payable only from the income of the district. No supervisor shall be personally liable for the consequences of his official acts; nor shall he receive, by virtue of his office, any benefits from the conduct of the affairs of the district other than the benefits any landowner may be entitled to receive from the operation of the district.

(4) If a vacancy occurs on the board of supervisors, the remaining supervisors shall appoint a successor for the remainder of the term of the seat vacated. In the event any supervisor ceases to be a qualified voter of and landowner in the district or the corporation which he represents ceases to be an owner of lands within the district, the supervisors shall thereupon declare a vacancy and proceed to appoint a successor.

Source: L. 37: p. 1177, § 7. CSA: C. 149A, § 7. L. 41: p. 695, § 1. L. 49: p. 672, § 5. CRS 53: § 128-1-7. C.R.S. 1963: § 128-1-7. L. 82: Entire section R&RE, p. 530, § 6, effective January 1, 1983. L. 84: (1)(a) amended, p. 948, § 1, effective April 5. L. 90: (2) amended, p. 1500, § 12, effective July 1. L. 95: (1) amended, p. 306, § 2, effective July 1.

35-70-108. Powers and duties of districts. (1) A conservation district, in the exercise of its public powers, has the following powers and duties in addition to others granted in this article, which powers and duties may be exercised by the supervisors subject to the rules, regulations, and bylaws adopted by such district and to the direction of the qualified voters at any regular or regularly called special meeting of the district:

(a) To conduct surveys, investigations, and research relating to the character of soil conservation and the preventive and control measures needed. In order to avoid duplication of research activities, such work, where possible, shall be conducted in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

(b) To conduct demonstrational projects within the district on lands owned or controlled by the United States or the state of Colorado or any of their agencies, with the consent of the agency administering and having jurisdiction thereof, and on any privately owned lands within the district, upon obtaining the consent of the owner of such lands;

(c) To erect structures and maintain any facilities to arrest or prevent the erosion of soils or lands within such district by reason of wind or water or from any other cause;

(d) To cooperate or enter into agreements with and, within the limit of its available funds, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupant of lands within the district in the carrying on of erosion control, flood control, and water conservation practices within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this article;

(e) To obtain options upon and to acquire or acquire control of, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to acquire real property or any interest therein by eminent domain under the provisions of articles 1 to 7 of title 38, C.R.S., for projects designed exclusively for flood

control, or sediment control, or both, as authorized under Public Law 566, enacted by the eighty-third congress (1954), but such power of eminent domain shall not be exercised by any district unless and until not less than two-thirds of the resident landowners owning at least fifty percent of the privately owned lands within the watershed area, as established by the watershed work plan map, shall, by petition filed with the supervisors of the district, approve the exercise of such power for any specified project; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes of this article;

(f) To make available to landowners and occupants within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such landowners or occupants to carry on operations upon their lands for the conservation of soil or water resources and for the prevention and control of soil erosion and floods;

(g) Repealed.

(h) To accept grants, services, and materials and to borrow money from the United States or from any corporation or agency created or designed by the United States to loan or grant money, or from the state of Colorado or any of its subdivisions, or from any other source, but in no event shall such district pledge the faith or credit of the state of Colorado or any county or other political subdivision, except that of such district. In connection with such grants or loans, it may enter into such agreements or contracts as may be required for such purposes.

(i) To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; and to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries;

(j) To sue and be sued in the name of the district; to have a seal which shall be judicially noticed; to have perpetual succession unless terminated as provided in this article; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations, not inconsistent with this article, to carry into effect its purposes and powers;

(k) To prepare a plan for the care, treatment, and operation of the lands within the district. This plan may be known as the district program and plan of work and shall establish in general its objectives and serve as a guide for carrying out its work to attain its objectives. This plan, from time to time, may be amended to meet the needs of the district.

(l) To cause annual audits to be made in accordance with the "Colorado Local Government Audit Law";

(m) To make contributions of information, data, statistics, funds, or other contributions valuable in the furtherance of land conservation to any state association or other organization representing the interests of conservation districts in the state in the accomplishment of that purpose;

(n) To sponsor, plan, construct, maintain, and operate flood prevention and watershed improvement projects for the development, conservation, control, and utilization of water resources and, in so doing, to have and exercise all of the authority and power otherwise granted in this article;

(o) To participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate,

maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices.

Source: **L. 37:** p. 1178, § 8. **CSA: C. 149A,** § 8. **L. 39:** p. 549, § 1. **L. 41:** p. 696, § 1. **L. 45:** p. 632, § 4. **L. 49:** p. 673, § 6. **CRS 53:** § 128-1-8. **L. 57:** p. 760, § 1. **C.R.S. 1963:** § 128-1-8. **L. 67:** p. 305, § 1. **L. 71:** p. 1191, § 1. **L. 82:** (1)(g) repealed, p. 537, § 15, effective January 1, 1983. **L. 88:** (1)(o) added, p. 1023, § 2, effective April 6. **L. 2002:** IP(1) and (1)(m) amended, p. 520, § 21, effective July 1.

Cross references: For Public Law 566, see U.S. Code Congressional and Administrative News, 83rd Congress, 2d Session, Vol. 1, pg. 769, 68 Stat. 666; for the "Colorado Local Government Audit Law", see part 6 of article 1 of title 29.

ANNOTATION

Law reviews. For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

35-70-109. Assessments - amendments to bylaws.

(1) Repealed.

(2) If, in the judgment of the qualified voters of a district or the supervisors, a tax levy or assessment is essential to accomplish the purposes of the district as set forth in this article, the levy may be assessed as follows:

(a) The supervisors shall prepare a budget and distribute the amount thereof over the lands within the district in accordance with the valuation for assessment, but in no event shall the assessment on real property be in excess of one-half of one mill. Such tax levy or assessment shall be for the general purposes of the district and not for special purposes as provided for in paragraph (d) of this subsection (2).

(b) Prior to setting a date for an election as provided in paragraph (c) of this subsection (2), the supervisors shall hold a public hearing concerning the imposition of a tax levy or assessment. Thereafter, if the board of supervisors decides to proceed with an election, it shall give notice by publication, as provided in section 35-70-105 (6), setting forth the date of the election, the rate or amount of such levy or assessment, a statement as to why such levy or assessment is necessary, and other information concerning the holding of the election.

(c) No tax levy or assessment shall be imposed within a district unless it is first submitted to the qualified electors of the district and approved by a majority of the votes cast. Any such election shall be conducted as provided in section 35-70-105 (7). Any increase in the tax levy or assessment, if the existing levy or assessment does not equal the one-half mill maximum, shall also be proposed and approved at an election in the same manner as provided in this paragraph (c). An existing tax levy or assessment may be continued from year to year or decreased as determined by the board of supervisors and approved by the state board.

(d) If, in the judgment of the qualified voters of a portion of a district or in the judgment of the supervisors, a tax levy or assessment is required for special purposes on real property in said portion of a district for the installation, maintenance, and operation of flood prevention and watershed improvement measures and practices, an assessment or tax levy, in addition to any levy assessed pursuant to paragraph (a) of this subsection (2), for such portion of the district may be levied on real property as provided for in this subsection (2), but only the qualified voters owning lands within the aforesaid delineated parts of the district may vote upon the question as to whether or not such levy or assessment shall be imposed. Such tax levy or assessment for special purposes shall be administered in the same manner as set forth in paragraph (a) of this subsection (2) and, when combined with any other levy of the district pursuant to this article, shall be subject to the same one-half mill levy limit set forth in said paragraph (a).

(3) The bylaws of any conservation district may be altered, amended, or repealed or have additions made thereto at any regular or regularly called special meeting of the district, upon compliance with the following requirements: A petition whose text sets forth the proposed amendment in full, signed by not less than three percent or fifty of the qualified voters of the district, whichever is less, must be filed with the supervisors; the complete text of the proposed amendment must be published in the notice of the meeting at which it is to be considered, which notice must be published at least once in a newspaper of general circulation within each county in which property included within the district is located, not less than ten days prior to the said meeting; and those present at the said meeting at which the proposed amendment is to be considered shall constitute a quorum for the consideration of the proposed amendment, and the affirmative vote of a two-thirds majority thereof shall be required to adopt the proposed amendment.

Source: L. 37: p. 1182, § 9. CSA: C. 149A, § 9. L. 41: p. 699, § 1. L. 45: p. 632, § 5. CRS 53: § 128-1-9. L. 55: p. 849, § 4. L. 57: p. 761, § 1. C.R.S. 1963: § 128-1-9. L. 82: (1) repealed, (2) R&RE, and (3) amended, pp. 537, 531, 532, §§ 15, 7, 8, effective January 1, 1983. L. 95: (3) amended, p. 307, § 3, effective July 1. L. 2002: (3) amended, p. 521, § 22, effective July 1.

ANNOTATION

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Elections under this section are not governed by constitutional standards. An election under the soil conservation act is not the same as an election under § 1 of art. VII, Colo. Const., setting out age requirements and so on. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

35-70-110. Appeals to state board. (1) If the owner of any lands within the district desires, he may appeal from any decision of the supervisors to the state board. To establish such an appeal, he must submit his appeal in writing to the state board within thirty days after the date of the action of the supervisors from which the appeal was taken. The notice of appeal shall state the particular part of the decision of the supervisors from which an appeal is being taken, if less than the entire decision is being appealed from, and shall state in simple and concise language the reasons why the owner considers the decision to be improper.

(2) Within twenty days following the receipt of such written appeal, the state board shall notify, in writing by registered mail, the person making such appeal and the local board of supervisors of the time and place it will hear the appeal. Such hearings shall be held not less than ten days nor more than a period spanning two consecutive meetings of the state board following the mailing of the notice.

(3) At the time and place set forth in the written notice for such meeting, the state board shall hear any persons in interest who desire to be heard in favor of or against the order as finally entered by the supervisors and shall make its decision thereon, which shall be entered in the minutes of the state board.

(4) and (5) Repealed.

(6) No action shall lie in any court of law to set aside or alter the final decision of the state board unless the petitioner or plaintiff therein alleges and shows to the court that the supervisors, in the rules or decision complained of, were guilty of gross carelessness or abuse of discretion, nor shall any action be maintained in such behalf unless the petitioner or plaintiff therein alleges and shows to the court that he has exhausted all rights of appeal provided in this section.

Source: L. 37: p. 1184, § 10. CSA: C. 149A, § 10. L. 41: p. 700, § 1. L. 45: p. 634, § 6. CRS 53: § 128-1-10. C.R.S. 1963: § 128-1-10. L. 82: (1) to (3) amended and (4) and (5) repealed, pp. 532, 537, §§ 9, 15, effective January 1, 1983.

35-70-111. Certify assessments or tax. If an assessment or tax has been voted as provided in section 35-70-109 (2), the supervisors shall, in accordance with the schedule prescribed by 39-5-128, C.R.S., certify to the board of county commissioners of the county in which any tract or parcel of land within the district may lie the amount of assessment or tax to be levied against such land as shown by the distribution of the budget of the district. Such assessment or tax shall be added to all other taxes levied or assessed against such land and shall be collected as are other property taxes. Assessments or taxes against any lands owned by the United States or the state of Colorado or any agency of either shall not be certified to the county commissioners as provided in this section, but such assessments or taxes shall be collected in accordance with agreements to be entered into by the supervisors and the public owner or agency controlling such lands.

Source: L. 37: p. 1185, § 11. CSA: C. 149A, § 11. L. 41: p. 701, § 1. L. 45: p. 636, § 7. CRS 53: § 128-1-11. C.R.S. 1963: § 128-1-11. L. 87: Entire section amended, p. 1408, § 6, effective April 22.

35-70-112. Failure to observe ordinances. (Repealed)

Source: L. 37: p. 1186, § 12. CSA: C. 149A, § 12. L. 41: p. 701, § 1. L. 45: p. 636, § 8. CRS 53: § 128-1-12. C.R.S. 1963: § 128-1-12. L. 82: Entire section repealed, p. 537, § 15, effective January 1, 1983.

35-70-113. Boards of appeals. (Repealed)

Source: L. 37: p. 1187, § 13. CSA: C. 149A, § 13. L. 41: p. 702, § 1. CRS 53: § 128-1-13. C.R.S. 1963: § 128-1-13. L. 73: p. 1355, §§ 4, 7. L. 82: Entire section repealed, p. 537, § 15, effective January 1, 1983.

35-70-114. Land use ordinances - violations. (Repealed)

Source: L. 37: p. 1188, § 14. CSA: C. 149A, § 14. L. 41: p. 703, § 1. L. 45: p. 637, § 9. CRS 53: § 128-1-14. L. 61: p. 763, § 1. C.R.S. 1963: § 128-1-14. L. 82: Entire section repealed, p. 537, § 15, effective January 1, 1983.

35-70-115. Additions and withdrawals. (1) (a) If any owner of lands adjoining or in the immediate vicinity of the boundary of an established conservation district desires to have his or her lands included within the district, the owner may petition the supervisors of the district, stating the legal description of the lands affected and the reasons why it is desired to have such lands included within the district and shall accompany the petition with two maps showing the outer boundaries of the lands petitioned to be included within the district.

(b) If the supervisors find that all of the owners of the lands within such proposed addition have signed the petition and if they approve the addition of such lands to the district, they shall notify the owners of such lands, in writing, of the fact that their lands are included in the district and are entitled to the services and subject to the authority of the district. The supervisors shall cause to be filed with the county clerk and recorder of the county in which any of such land may be located a certificate describing the legal boundaries of the land and stating that such land has been added to and included within such district, and the owner of such land shall pay to the district the cost of recording such certificate.

(c) When, in the opinion of the supervisors, there is public land owned by the United States government that, by reason of its topography, drainage, and other factors, should be included in the conservation district, the supervisors may file with the clerk and recorder of the county in which the land is situated a notice of inclusion of said land in the conservation district. A copy of said notice shall be served personally or by registered mail, return receipt requested, upon the head of the agency controlling said land, and, at the discretion of the

board, information copies may be provided to local agency officials. Said notice shall describe the land to be included within the district and shall further state that said land shall, on the sixtieth day after personal service or delivery of said notice by registered mail, be deemed to be within the district until and unless the controlling agency files a statement with the county clerk and recorder withdrawing said land from the conservation district.

(d) All costs for including any such area within a conservation district shall be paid by the district, and no assessment of any sort shall be made against said land at any time on account of its inclusion within said district.

(2) In the event five or more owners of land adjoining or in the immediate vicinity of the boundary of an established conservation district desire to have their own and neighboring lands added to and included within such district, they shall first secure the written consent of the supervisors of such district and may then petition the state board substantially in the form and with the supporting data required by section 35-70-104, and thereafter the state board shall proceed as to the owners of land within the proposed addition substantially as provided in section 35-70-105 (5) and (7); except that the sole question to be voted upon at the meeting of the landowners shall be the question of whether or not the lands within the boundaries of the proposed addition to the district shall be so included.

(3) If a majority of the votes cast are against such inclusion, the state board shall record the fact in its minutes, and the election shall adjourn; but, if a majority of the votes cast are in favor of such inclusion, the state board shall note that fact in its minutes and shall certify to the director of the division of local government in the department of local affairs the fact that such additional lands have been included within such district, and the director of said division shall issue his certificate describing the legal boundaries of the lands and stating that such land has been added to and included within the district.

(4) Within thirty days after the date of such certificate, the supervisors of the district shall cause the same to be recorded in the books of the county clerk and recorder of the county in which the lands so added are located in whole or in part. From the date of such certificate, the lands thereby included within the district shall be entitled to the same services and subject to the same authority of the district as are other lands of the district.

(5) If the boundary line common to two adjoining conservation districts divides the land of any owner so that such land lies partially within each of such districts, the owner of such land, with the written consent of the supervisors of both such districts, may have all of such land included in whichever of the two districts the owner selects and excluded from the other. No land shall be excluded from a district until and unless all lawful taxes and other charges of the district against such land have been paid. The supervisors of the district to which such land shall be transferred shall cause to be recorded in the books of the county clerk and recorder of the county in which the land so transferred lies in whole or in part a certificate of such transfer, together with the legal description of the land so transferred, and shall collect from the owner of such land the cost of recording such certificate.

(6) In all proceedings as to petitions and elections under the provisions of this section, the qualifications of landowners participating therein shall be as described in section 35-70-104.

(7) In the event that any lands included within a district cease to be used for agricultural purposes and are thereafter devoted exclusively to commercial or industrial uses or other uses related to urban development, or are subdivided for residential purposes, or become a part of the area included within an incorporated municipality, such lands may be withdrawn from a conservation district as follows:

(a) to (d) Repealed.

(e) When, in the opinion of the supervisors, lands included in a district cease to be used for agricultural purposes, the supervisors, on their own initiative, may, upon sixty days' written notice to the owner of lands involved, cause such lands to be withdrawn from the district; or the supervisors may, in lieu of such written notice, give notice of such withdrawal by publication, by causing notice of such withdrawal to be published not less than sixty days nor more than ninety days before the date on which the withdrawal of such lands from the district becomes final.

(f) Said notice shall be published in one issue of a newspaper of general circulation published within the district from which such lands are to be withdrawn, and, if there is no

such newspaper within said district, one publication in a newspaper of general circulation throughout the state shall be sufficient. Said notice shall also be posted in a conspicuous place in the conservation district office of the district from which such lands are to be withdrawn. The written notice or, if notice is given by publication, both the publication and the posted notice shall state the reasons for the withdrawal and the date on which the withdrawal becomes final and shall describe the lands to be withdrawn with such certainty as to enable a property owner to determine whether his or her property is included in such lands.

(g) and (h) Repealed.

(8) If the supervisors of one or more districts determine that the transfer of lands from one district to one or more other districts will increase the efficiency of the services provided by the districts to the owner of the land that is to be transferred, they shall proceed as follows:

(a) The supervisors of the district from which the land is to be transferred and the supervisors of the district into which the land is to be transferred shall forward their written request to the state board for approval of the transfer.

(b) If it is the opinion of the state board that the requested transfer is in the best interests of the districts involved, the state board shall make and record such determination and give written notices to the districts of its approval.

(9) (a) After a district has been formed and is in operation, the owner of land within the district may have the owner's land withdrawn from the district by submitting a written and notarized statement of withdrawal to the supervisors of the district. Upon receipt of such statement by the supervisors, the land requested to be withdrawn shall be deemed withdrawn, and no further action shall be necessary for completion of the withdrawal; except that such land shall remain obligated for its proportionate share of the district's expenses and debts incurred prior to receipt of said statement.

(b) Upon receipt of a statement of withdrawal pursuant to paragraph (a) of this subsection (9), the supervisors shall file a certificate with the county clerk and recorder of the county in which such land is located that describes the legal boundaries of the land being withdrawn and states such land has been withdrawn from the district. The owner of the withdrawn land shall reimburse to the district any fee charged for recording such certificate.

(10) No land within a conservation district shall be deemed withdrawn from the district until the procedures set forth in subsection (9) of this section have been met.

Source: L. 37: p. 1189, § 15. CSA: C. 149A, § 15. L. 41: p. 703, § 1. L. 49: p. 674, § 7. CRS 53: § 128-1-15. L. 55: p. 850, § 5. L. 57: p. 762, § 1. L. 59: p. 710, § 1. L. 61: p. 765, § 1. L. 62: p. 264, § 1. C.R.S. 1963: § 128-1-15. L. 65: p. 1058, § 2. L. 73: p. 1355, §§ 5, 6. L. 76: (3) amended, p. 604, § 26, effective July 1. L. 82: (1)(b), (2), (3), and (4) amended, (10) added, (9) R&RE, and (7)(a) to (7)(d), (7)(g), and (7)(h) repealed, pp. 533, 534, 537, §§ 10, 11, 15, effective January 1, 1983. L. 95: (9) amended, p. 308, § 4, effective July 1. L. 2002: (1)(a), (1)(c), (1)(d), (2), (5), IP(7), (7)(f), and (10) amended, p. 521, § 23, effective July 1.

35-70-116. County agents. Any resident county extension agent whose jurisdiction lies wholly or in part in any established conservation district shall be ex officio a member of the board of supervisors of such district in an advisory capacity, but without the right to vote. Any county agent may serve in such capacity in more than one district.

Source: L. 37: p. 1189, § 16. CSA: C. 149A, § 16. L. 41: p. 705, § 1. CRS 53: § 128-1-16. C.R.S. 1963: § 128-1-16.

35-70-117. Counties to cooperate. The county commissioners of any county in which a conservation district lies in whole or in part shall cooperate with the supervisors of such district in carrying out the purposes of this article, and to that end may use the equipment of the county and persons employed by the county to do such physical work as may be required by the supervisors, and may make a reasonable charge therefor; and, if the county

commissioners find that the benefits accruing to the county by reason of the program of a conservation district justify such action, they may make donations to such district of money, services, or the use of equipment.

Source: L. 37: p. 1190, § 17. CSA: C. 149A, § 17. L. 41: p. 705, § 1. CRS 53: § 128-1-17. C.R.S. 1963: § 128-1-17. L. 2002: Entire section amended, p. 522, § 24, effective July 1.

35-70-118. Dissolution - procedure - conservation fund. (1) No proceeding for the dissolution of a conservation district shall be initiated within five years after the date of the organization of the district. Anytime after the expiration of such five-year period, proceedings to determine whether or not a conservation district shall be dissolved may be instituted by a petition addressed to the state board, which shall be signed by not less than twenty-five percent of the owners of land within the district and approved by a majority of the supervisors of such district. Such petition shall state the reasons for the dissolution and the proposed disposition of all contracts, assets, and liabilities held or owed by the district and shall request that the state board proceed to hold a hearing and call an election to determine whether or not such district shall be dissolved.

(2) Within sixty days after receipt of such petition, the state board shall give notice by publication, as specified in section 35-70-105 (6), of the filing of such petition; of the date (not less than twenty days after the date of such notice), time, and place when a hearing shall be had to determine the sufficiency of the petition and the advisability of dissolving the district; that all complaints and objections that may be made in writing concerning the sufficiency of the petition and the advisability of the dissolution of the district by the owners of any land within such district will be heard and determined before final action thereon; and that all owners of land within the district shall have the right to attend such hearing and be heard.

(3) (a) On hearing, if, in the opinion of the state board, the petition is insufficient or proper arrangements have not been made for the disposition of the contracts, assets, and liabilities of the district, the papers shall be returned to the petitioners for amendment. If, in the opinion of the state board, the dissolution of the district is not advisable, it shall so inform the petitioners, and the district shall not be dissolved; but subsequent petitions may be filed after six months have expired after the date of denial of such petition and new hearings and determinations made thereon.

(b) If, following the hearing, it is the opinion of the state board that the petition is sufficient and that the dissolution is advisable, the state board shall call an election in the manner provided for in section 35-70-105 (5) and (7), but the only question to be determined at such election shall be whether or not the district shall be dissolved.

(4) (a) If a majority of the votes cast are against dissolution of the district, the district shall continue to exist as though no petition had been filed and no election held. Thereafter, no petitions for dissolution shall be considered by the state board at intervals of less than three years.

(b) If a majority of the votes cast are for dissolution of the district, the state board shall, within sixty days after such election, certify to the division of local government in the department of local affairs a statement of such election and the result thereof. The director of said division thereupon shall execute and issue to the state board a certificate of dissolution, and thereafter the existence of the district shall cease. The state board shall forthwith cause the certificate of dissolution to be recorded in the books of the county clerk and recorder of the county in which such district was located in whole or in part.

(5) (a) Within thirty days after the division of local government has issued a certificate of dissolution, the supervisors shall proceed, as trustees, to sell the assets of the district at public or private sale, whichever may be approved by the state board. After paying any outstanding accounts of the district and the cost of such dissolution and sale, the remainder of the proceeds shall be paid over to the state board and shall be deposited with the state treasurer to the credit of such board in a fund to be known as the conservation fund. Such fund shall be expended by the state board as needed by the organizations of conservation districts and for carrying out the purposes of this article and not otherwise. If at any time

after such fund is established there are no conservation districts in existence in the state, the state board shall so notify the controller, and any balance remaining in such fund shall be transferred to the general fund of the state.

(b) All contracts entered into by the district prior to dissolution shall remain in full force and effect until terminated by the terms thereof or by mutual agreement, but, in all such contracts, upon dissolution of such districts, the state board shall be substituted for the supervisors as the district's party to such contracts. The state board has the same right as the supervisors would have had to perform and require performance of such contract, sue and be sued thereon, and modify or terminate such contracts by mutual agreement or as provided in such contracts, but no member of the state board shall be subject to any personal liability therefor.

(c) Such dissolution shall not affect any lien or right of action theretofore held by the district, and the state board shall succeed to all the rights and obligations of the supervisors in such respect. Any funds coming into the hands of each county treasurer in payment of taxes or assessments levied against the lands within the district after dissolution of the district or remaining in such treasurer's hands at the time of such dissolution shall be treated as are other assets of the districts, as provided in this section.

Source: L. 37: p. 1190, § 18. CSA: C. 149A, § 18. L. 41: p. 706, § 1. L. 49: p. 675, § 8. CRS 53: § 128-1-18. L. 59: p. 713, § 1. C.R.S. 1963: § 128-1-18. L. 76: (4)(b) and (5)(a) amended, p. 605, § 27, effective July 1. L. 82: (1), (2), (3)(b), and (4) amended, p. 534, § 12, effective January 1, 1983. L. 2002: (1) and (5)(a) amended, p. 523, § 25, effective July 1.

35-70-119. Consolidation of districts. (1) Two or more established districts may be consolidated into a single district by the following procedure:

(a) The supervisors of the districts desiring to consolidate, acting upon their own initiative or upon the petitions of a substantial number of the qualified landowners in their districts, may jointly prepare and submit to the state board a request for authority to consolidate. Such request shall be accompanied by maps showing the geographical boundaries and locations of the districts to be consolidated and of the proposed consolidated district. If the state board finds that the proposed consolidation is in the best interests of the districts affected, it shall notify the supervisors of the districts that they have authority to proceed.

(b) Upon receiving such notification to proceed, the supervisors of the districts shall hold a public hearing concerning the proposed consolidation. Thereafter, if the supervisors decide to proceed with the consolidation, each board of supervisors shall request that the state board prepare a notice of election on the proposed consolidation, setting forth the circumstances of the proposed consolidation and the date, time, and place of a special election to be held in each of the districts at which the question of consolidation will be voted upon. The notice shall be published as specified in section 35-70-105 (6), in a newspaper of general circulation in each of the districts not more than thirty days nor less than ten days before the election and posted at several places in each of the districts. The election shall be conducted by the state board as provided in section 35-70-105 (7).

(c) If a majority of the votes cast in each of the districts are against such consolidation, the state board shall dismiss the proceedings, and the district shall proceed as though no such election had been held. If a majority of the votes cast in each of the districts are in favor of consolidation, the board of supervisors of each district shall certify jointly that fact to the state board, which shall in turn certify it to the division of local government in the department of local affairs. Upon such final certification, the districts so consolidated shall cease to exist as separate districts.

(d) (I) After an election approving a consolidated district, the supervisors of each board of a consolidated district shall constitute the organizational board of the consolidated district, regardless of the number of supervisors. This organizational board shall remain as the board of the consolidated district until such time as the first board of the consolidated district is selected as provided in this paragraph (d).

(II) The organizational board, within six months after the date of the consolidation election, shall select and determine the terms of the supervisors of the first board of the consolidated district. In making such determination, the organizational board shall fix the terms of the first board as follows: The terms of two directors of the first board having the fewest years to serve on the board to which they were originally elected shall expire at the first election after the consolidation, and the terms of the remaining three directors having the greatest number of years to serve on the board to which they were originally elected shall expire at the second election. If the terms of the supervisors so selected to the first board of the consolidated district expire on the same date, the terms of such supervisors shall be determined by the organizational board. Such terms shall be determined, however, so that the terms of three supervisors of the consolidated district shall expire at the time that the terms of three supervisors of existing districts shall expire, and the terms of the remaining two supervisors of the consolidated district shall expire at the time that the terms of the remaining two supervisors of existing districts shall expire. Thereafter, each supervisor in office shall be elected for a four-year term.

(III) The members of the organizational board of the consolidated district not selected to act as the members of the first board of the consolidated district may act, however, as advisory members to the first board until such time as the terms of office for which they were originally elected would have expired. Advisory members may be compensated equally with compensation paid to the board of the consolidated district for each meeting attended. Advisory board members may not act as officers of nor bind the consolidated district and shall have no vote on any matters before the board of the consolidated district, but they may be employed by the board of the consolidated district in any capacity.

(e) A consolidated district has all of the rights, powers, and authority of each of the conservation districts consolidated. After consolidation the district may consolidate with any other conservation districts, and all actions and proceedings of the consolidated district shall be done without regard to the fact of consolidation.

(2) Any contract to which any district is a party remains the obligation of that district, and the assets or proceeds from the assets thereof shall be first available for the payment of any obligation thereunder, unless the other parties to the said contract agree and consent to the substitution of the new district as a party thereto. In either event, the consolidated district shall, in accordance with the terms of any agreement made between the consolidating districts, be an additional party to any such contract and liable thereon and with full right and authority to perform or require the performance of the said contract, including the right to enforce the said contract by any lawful action, as fully as though the consolidated district were an original party thereto. Upon consolidation of such districts, the consolidated district shall become and shall proceed in all things as a newly-organized district under the provisions of this article.

Source: L. 41: p. 707, § 1. CSA: C. 149B, § 19. CRS 53: § 128-1-19. L. 57: p. 764, § 1. C.R.S. 1963: § 128-1-19. L. 71: p. 1192, § 1. L. 76: (1)(c) amended, p. 605, § 28, effective July 1. L. 82: (1) R&RE, p. 535, § 13, effective January 1, 1983. L. 84: (1)(d)(II) amended, p. 949, § 2, effective April 5. L. 2002: (1)(e) amended, p. 523, § 26, effective July 1.

35-70-120. Change of name. The term “soil erosion district” as used in “The Colorado Soil Conservation Act of 1937” and “conservation district” as used in this article shall be deemed synonymous. Districts organized after April 3, 1941, shall be known as conservation districts, and districts organized before April 3, 1941, may be known either as soil erosion districts or as conservation districts, as determined by the supervisors of such districts. The change of name permitted by this section shall not affect in any way the rights or obligations of districts or landowners or impair the obligations of any contract to which any such district is a party at the time of such change of name.

Source: L. 41: p. 708, § 2. CSA: C. 149B, § 20. CRS 53: § 128-1-20. C.R.S. 1963: § 128-1-20. L. 2002: Entire section amended, p. 523, § 27, effective July 1.

Editor’s note: “The Colorado Soil Conservation Act”, enacted in 1937, first appeared in the 1941 and 1942 supplements to the 1935 Colorado Statutes Annotated before being compiled into volume 4B, 1949 replacement volume, of the 1935 Colorado Statutes Annotated.

35-70-121. Cooperation-between districts. Whenever, by reason of location, similarity of problems, and need for mutual assistance, the purpose of this article may be more economically, completely, and satisfactorily performed and accomplished thereby, two or more conservation districts may cooperate with each other by the joint exercise of the powers granted in section 35-70-108. The nature and extent of such cooperation and the duties and obligations of and benefits to the respective cooperating districts and interests in property that may be jointly acquired and used shall be determined by contract to be entered into between or among the cooperating districts, subject to the bylaws adopted by each of such districts and to the direction of the qualified voters at any regular or regularly called special meeting of each such district.

Source: **L. 49:** p. 677, § 9. **CSA: C. 149B, § 21. CRS 53:** § 128-1-21. **C.R.S. 1963:** § 128-1-21. **L. 82:** Entire section amended, p. 537, § 14, effective January 1, 1983. **L. 2002:** Entire section amended, p. 524, § 28, effective July 1.

35-70-122. Contributions for purposes of inclusion of conservation districts in the risk management fund. Each conservation district shall contribute moneys, which shall be deposited in the risk management fund, for the conservation district’s proportionate share, as determined by the executive director of the department of personnel, of potential claims arising from conservation districts.

Source: **L. 87:** Entire section added, p. 980, § 3, effective July 1. **L. 96:** Entire section amended, p. 1544, § 140, effective June 1. **L. 2002:** Entire section amended, p. 524, § 29, effective July 1.

Soil Erosion

ARTICLE 71

Soil Erosion - Dust Blowing - 1951 Act

35-71-101 to 35-71-109. (Repealed)

Source: **L. 77:** Entire article repealed, p. 293, § 15, effective May 26.

Editor’s note: This article was numbered as article 2 of chapter 128, C.R.S. 1963, and was not amended prior to its repeal in 1977. For the text of this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 72

Soil Erosion - Dust Blowing - 1954 Act

35-72-101.	Legislative declaration.		culture. (Repealed)
35-72-101.5.	Definitions.	35-72-105.	Method of assessment.
35-72-102.	Duty of landowner - liability for damage.	35-72-105.5.	Immunity.
		35-72-106.	Judicial review.
35-72-103.	Action by county commissioners - emergency conditions.	35-72-107.	Cooperation with other agencies in erosion control.
		35-72-108.	Wind erosion control fund. (Repealed)
35-72-104.	Action by department of agri-		

35-72-101. Legislative declaration. (1) Soil erosion and damage caused by wind storms and blowing soil produced thereby are recognized and declared to be injurious or destructive to the property and natural resources of this state and a menace to the safety of the citizens of the state.

(2) To deter actions which are harmful to property and natural resources and to further the ability of persons injured by negligent conduct associated with blowing soil to have legal recourse, it is determined to be in the interest of the people of this state to allow recovery of damages for such negligent conduct.

Source: L. 54, 2nd Ex. Sess.: p. 22, § 1. CRS 53: § 128-3-1. C.R.S. 1963: § 128-3-1. L. 83: Entire section amended, p. 1375, § 1, effective May 12.

ANNOTATION

Applied in *Haas v. Lavin*, 625 F.2d 1384 (10th Cir. 1980).

35-72-101.5. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means a board of county commissioners.

(2) "District" means a conservation district formed under the provisions of article 70 of this title.

(3) "Occupier" means any person, firm, any unit of state government or any agency of the state or federal government, or corporation, other than the owner, who is in lawful possession of any land within the county, whether as lessee, renter, tenant, or otherwise.

(4) "Owner" means any person, firm, or agency of state or federal government or unit of state government in whom is vested the ownership, dominion, or title of the property, and is recognized and held responsible by the law as owner of the property.

Source: L. 83: Entire section added, p. 1375, § 2, effective May 12. L. 2002: (2) amended, p. 524, § 30, effective July 1.

35-72-102. Duty of landowner - liability for damage. (1) To conserve property and the natural resources of the state and to prevent the injurious effects of blowing soil, it is the duty of the owner or occupier of any land in this state to prevent soil blowing therefrom, as nearly as can be done, by planting perennial grasses, shrubs, or trees or annual or biennial crops and by treatment consisting of listing, chiseling, and similar practices at such times and in such manner as will prevent or minimize erosion of the soil and soil blowing. If soil blowing is evident, such practices shall include, to the extent practicable, leaving stubble residue on top of the soil.

(2) Any owner or occupier who sustains damages to his property, including but not limited to crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock, proximately caused by the failure of any other owner or occupier of other land to discharge his duty to prevent soil blowing from land he owns or occupies may recover actual damages from the other owner or occupier by bringing an action in any court of competent jurisdiction.

(3) Any unit of state government or any agency of the state or federal government which sustains damages to any of its property, including but not limited to roads, barrow ditches, or fences, proximately caused by the failure of an owner or occupier to discharge his duty to prevent soil blowing from land he owns or occupies may recover actual damages from such owner or occupier by bringing an action in any court of competent jurisdiction.

(4) Such recourse to the court may be taken only upon demonstration that such owner, occupier, unit, or agency of government allegedly sustaining damages has submitted a written report of soil blowing to the board pursuant to section 35-72-103.

(5) In any action brought under this section, any preventive practice followed by an owner or occupier pursuant to a citation issued by a board pursuant to the provisions of section 35-72-103 is not an admission of tort liability, in any such action, and no

determination of the board shall give rise to a presumption of negligence or lack of negligence of an owner or occupier.

(6) The provisions of this section shall not apply to any land less than one acre in area.

Source: L. 54, 2nd Ex. Sess.: p. 22, § 2. CRS 53: § 128-3-2. C.R.S. 1963: § 128-3-2. L. 81: Entire section amended, p. 1695, § 2, effective July 1. L. 83: Entire section amended, p. 1376, § 3, effective May 12.

ANNOTATION

Applied in *Haas v. Lavin*, 625 F.2d 1384 (10th Cir. 1980) (decided prior to the 1983 amendments to this article).

35-72-103. Action by county commissioners - emergency conditions. (1) When the board of any county of the state is advised, in writing, or otherwise informed that soil is blowing from any land in the county and is supplied with a description of such land and it appears that, by reason of such blowing from any land in the county, private property, including but not limited to crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock on adjacent or other land, or roads, barrow ditches, fences, or other public property is being damaged, such board shall, as soon as practicable, give notice of such complaint to the owner or occupier of the land from which soil is blowing and inspect or cause to be inspected such land. If the board finds, after consultation with a member or members of the local district board of directors, with the state conservation board, or with local owners or occupiers, including the owner or occupier of the land from which soil is blowing, that soil is blowing from such land in sufficient quantity to be injurious to private property, including but not limited to crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock on adjacent or other land, or to roads, barrow ditches, fences, or other public property because of soil being blown thereon, such board shall determine what, if anything, can be done to prevent or materially lessen such blowing of soil from such land. If the board determines, after such consultation, that the complaint lodged with it falls under the provisions of article 3.5 of this title, no further action shall be taken by the board. If the board finds, after such consultation, that an emergency exists, that such blowing is occurring, that it can be prevented or materially lessened by treatment of the soil, and that property damage appears to be resulting therefrom, such board shall issue a citation to the owner as listed upon the records of the county assessor and to the occupier, if known to such board, specifying the nature of the treatment required and the extent thereof and the date by which such treatment is to be commenced and the date it is to be completed.

(2) Notice of such citation shall be given by personal communication, if possible, and by mailing a copy thereof by registered mail addressed to each of the persons to whom the citation is directed at the address as shown on the records of the county assessor; otherwise, service of such citation shall be made as provided by the Colorado rules of civil procedure for the service of summons. Such citation shall also be posted in a public place in the county courthouse in the county in which said land is located. If such treatment is not commenced on or before three days or within such greater time as may be specified in such citation after the date of such personal communication, mailing, and posting or the service of notice as provided in this subsection (2), or if the treatment is not performed in the manner and to the extent specified in the citation and in a workmanlike manner and with due diligence, or if, prior to the expiration of the date fixed in said citation, the persons to whom said citation is directed advise the board that they do not intend to or cannot accomplish the work so directed, the board may cause such treatment to be performed in accordance with such citation.

(3) The provisions of this section shall not apply to any land less than one acre in area.

Source: L. 54, 2nd Ex. Sess.: p. 22, § 3. CRS 53: § 128-3-3. C.R.S. 1963: § 128-3-3. L. 65: p. 1060, § 1. L. 81: (1) and (2) amended, p. 1695, § 3, effective July 1. L. 83: Entire section amended, p. 1377, § 4, effective May 12. L. 2002: (1) amended, p. 516, § 9, effective July 1.

ANNOTATION

Conditions of blowing soil subject to summary abatement as nuisance per se. Conditions of blowing soil allegedly existing on owner's land which are injurious to the public health and to adjacent property constitute a nuisance per se, and are subject to summary abatement.

Oberst v. Mays, 148 Colo. 285, 365 P.2d 902 (1961).

Applied in Haas v. Lavin, 625 F.2d 1384 (10th Cir. 1980) (decided prior to the 1983 amendments to this article).

35-72-104. Action by department of agriculture. (Repealed)

Source: L. 54: 2nd Ex. Sess., p. 23, § 4. CRS 53: § 128-3-4. C.R.S. 1963: § 128-3-4. L. 81: Entire section repealed, p. 1697, § 6, effective July 1.

35-72-105. Method of assessment. (1) Upon the completion of the treatment caused to be performed by the board as provided in section 35-72-103, the board shall, by resolution, determine the land so benefited and from which soil is blowing and assess against said land so benefited the cost of said treatment not in excess of fifteen dollars per acre or the actual cost of treatment, whichever is less, in any one calendar year. Said resolution shall be recorded in the minutes of the board, the original thereof shall be delivered by the clerk of said board to the county assessor, and a copy thereof shall be mailed by registered mail to the landowner at the address shown on the records of the county assessor and to the occupier, if known to the board.

(2) Upon delivery of said resolution to the assessor, he shall extend the same upon the assessment rolls, and said assessment shall thereupon become a part of the general taxes and constitute a lien against said land as set forth in said resolution and shall thereafter become due in the same manner and be collected in the same manner as the general ad valorem property tax. Such assessment may be paid at any time before general taxes become due and payable. All of the provisions of the general laws for the enforcement of the collection of taxes shall be applicable thereto after the extension by the assessor.

(3) All such amounts collected shall be transmitted to the county treasurer, who shall credit the same to the county general fund in order to reimburse those funds which were expended by the board of county commissioners in carrying out the treatment action as authorized by this article. The county treasurer shall not be entitled to collect any fees for the collection of such assessments.

Source: L. 54, 2nd Ex. Sess.: p. 23, § 5. CRS 53: § 128-3-5. C.R.S. 1963: § 128-3-5. L. 81: (1) and (3) amended, p. 1696, § 4, effective July 1. L. 83: (1) amended and (5) added, p. 1378, § 5, effective May 12.

Cross references: For collection of taxes, see article 10 of title 39.

ANNOTATION

Applied in Haas v. Lavin, 625 F.2d 1384 (10th Cir. 1980) (decided prior to the 1983 amendments to this article).

35-72-105.5. Immunity. So long as it is engaged in the scope of activity permitted by the provisions of this article, a board or any of its members shall not be held liable in any court of competent jurisdiction for conduct associated with such tasks undertaken or assigned by it.

Source: L. 83: Entire section added, p. 1378, § 6, effective July 1.

35-72-106. Judicial review. Any landowner aggrieved at the amount of the assessment against his land may bring an action in the district court of the county in which the land is

situated to test the validity of the assessment or to enjoin its collection, but such action must be brought within thirty days after the assessment is made and the copy of the resolution of the board is mailed as provided in section 35-72-105 and cannot be brought thereafter.

Source: L. 54, 2nd Ex. Sess.: p. 24, § 6. CRS 53: § 128-3-6. C.R.S. 1963: § 128-3-6. L. 83: Entire section amended, p. 1378, § 7, effective May 12.

ANNOTATION

Assessment not fixed until period for landowner to be heard has expired. This section fixes the time (30 days) within which, and the place (district court) where an aggrieved landowner may bring an action for the purpose of contesting the validity of an assessment after the same has been extended on the assessment rolls: The assessment does not become irrevocably fixed until the time for the landowner's opportunity to be heard thereon by an action brought in the district court has expired. Oberst v Mays, 148 Colo. 285, 365 P.2d 902 (1961).

35-72-107. Cooperation with other agencies in erosion control. The board of any county wherein land is being eroded or soil is blowing, as provided in this article, is hereby authorized to enter into any agreement with the federal government or any agency thereof, the state of Colorado or any agency thereof, any district, or any other county or counties for cooperation in preventing or attempting to prevent soil erosion or property damage by soil blowing.

Source: L. 54, 2nd Ex. Sess.: p. 24, § 7. CRS 53: § 128-3-7. C.R.S. 1963: § 128-3-7. L. 81: Entire section amended, p. 1696, § 5, effective July 1. L. 83: Entire section amended, p. 1379, § 8, effective May 12.

35-72-108. Wind erosion control fund. (Repealed)

Source: L. 54, 2nd Ex. Sess.: p. 25, § 8. CRS 53: § 128-3-8. C.R.S. 1963: § 128-3-8. L. 81: Entire section repealed, p. 1697, § 6, effective July 1.

DEVELOPMENT AUTHORITY

ARTICLE 75

Colorado Agricultural Development Authority Act

	PART 1	35-75-108.	Authority - loans to or made by lenders.
	GENERAL	35-75-109.	Authority - rules and regulations.
35-75-101.	Short title.	35-75-110.	Notes.
35-75-102.	Legislative declaration.	35-75-111.	Bonds.
35-75-103.	Definitions.	35-75-111.5.	Issuance of bonds to construct renewable energy generation facilities and electric transmission lines - renewable energy cooperatives.
35-75-104.	Colorado agricultural development authority - creation - membership.		
35-75-105.	Organization meeting - chairman - personnel - surety bond - conflict of interest.	35-75-112.	Negotiability of bonds.
		35-75-113.	Security for bonds and notes.
35-75-106.	Meetings of board - quorum - expenses.	35-75-114.	Personal liability.
		35-75-115.	Purchase.
35-75-107.	General powers and duties of authority.	35-75-116.	Payment of bonds - nonliability of state.

35-75-117.	Exemption from taxation - securities law.	PART 2
35-75-118.	Fees.	AGRICULTURE VALUE-ADDED DEVELOPMENT FUND PROGRAM
35-75-119.	Investment powers of authority.	
35-75-120.	Proceeds as trust funds.	
35-75-121.	Agreement of the state not to limit or alter rights of obligees.	35-75-201. Legislative declaration - purpose of part.
35-75-122.	Enforcement of rights of bondholders.	35-75-202. Definitions.
35-75-123.	Bonds eligible for investment.	35-75-203. Colorado agricultural value-added development board - creation - members.
35-75-124.	Account of activities - receipts for expenditures - report - audit.	35-75-204. Duties of board - agriculture value-added grants, loans and loan guarantees, and equity investments.
35-75-125.	Federal social security act.	35-75-205. Grants, loans and loan guarantees, and equity investments - agriculture value-added cash fund - created - repeal.
35-75-126.	Powers of authority not restricted.	
35-75-127.	Repeal. (Repealed)	

PART 1

GENERAL

35-75-101. Short title. This article shall be known and may be cited as the "Colorado Agricultural Development Authority Act".

Source: L. 81: Entire article added, p. 1731, § 1, effective June 19.

35-75-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The high cost and lack of available agricultural loans for farmers and other agricultural enterprises, with the resultant decrease in crop, livestock, and business productivity and resultant inability on the part of farmers and other agricultural enterprises to acquire modern agricultural equipment and processes, makes it difficult for farmers and other agricultural enterprises to maintain their present employment levels or to increase employment and lessens the supply of agricultural commodities available to fulfill the needs of the citizens of this state;

(b) As a result of the continuing increase in the costs of maintaining operations, including costs of construction and rehabilitation, taxes, heating and electricity expenses, maintenance and repair expenses, and the cost of land, the state of Colorado suffers from structural economic weaknesses which contribute to a decline in capital investment, unemployment, and underemployment; and

(c) The insufficiency of gainful employment in rural areas puts additional pressure on the state's welfare, public health, and crime prevention programs.

(2) The general assembly further finds that:

(a) Farm credit and agricultural loan financing is not currently available at interest rates which are consistent with the needs of farmers and other agricultural enterprises;

(b) The problems set forth in this section cannot alone be remedied through the operation of private enterprise but can be alleviated through the creation of an agricultural development authority to encourage the investment of private capital in the agricultural sector through the use of public financing for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets. Creation of such an agricultural development authority to coordinate and cooperate with farmers and other agricultural enterprises is essential to alleviating these conditions.

(c) Alleviating the conditions and problems set forth in this section by the encouragement of private investment through an agricultural development authority is a public purpose, and public money provided by the sale of revenue bonds may be borrowed, expended, advanced, loaned, and granted for such use. Such activities shall not be

conducted for profit and are proper governmental functions best accomplished by the creation of an agricultural development authority vested with the powers and duties specified in this article.

(d) This article is enacted to protect the health, safety, and welfare of the people of this state.

(3) The agricultural development authority created by this article shall make financing available for farmers and other agricultural enterprises to serve those people which private industry is unable to serve.

Source: L. 81: Entire article added, p. 1731, § 1, effective June 19.

35-75-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agriculture" or "agricultural enterprise" means the real and personal property constituting farms, ranches, and other agricultural commodity producers, including aquaculture, floriculture, silvaculture, and other agricultural endeavors that the authority wishes to include within the provisions of this article. Such term shall include agricultural land, equipment used in the production and processing of agricultural products, and other capital improvements including, but not limited to, the purchase of livestock and the implementation of soil conservation practices.

(2) "Authority" means the Colorado agricultural development authority created by section 35-75-104.

(3) "Board" means the board of directors of the authority.

(4) "Bond" means any bond, note, debenture, interim certificate, grant and revenue anticipation note, or other evidence of indebtedness authorized to be issued by the authority pursuant to this article.

(5) "Borrower" means an enterprise engaged in agriculture or agricultural processing in Colorado.

(6) "Contracting party" means any party to a lease, sales contract, or loan agreement except the authority.

(7) "Lease" means:

(a) A lease containing an option to purchase an agricultural enterprise for a nominal sum upon payment, in full or with provision for such payment, of all bonds issued in connection with the agricultural enterprise, all interest thereon, and all other expenses in connection with the agricultural enterprise; or

(b) A lease containing an option to purchase an agricultural enterprise at any time, as provided in such lease, upon payment of the purchase price. The purchase price shall be sufficient to pay all bonds issued in connection with the agricultural enterprise, all interest thereon, and all other expenses incurred in connection with the agricultural enterprise, but payment may be made in the form of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the lessee which provide for timely payments, including, but not limited to, interest thereon sufficient for such purposes and delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued.

(8) "Lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or other institution qualified within the state to originate and service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.

(9) "Loan" means any lease, loan agreement, or sale contract entered into with a borrower.

(10) "Loan agreement" means an agreement which provides for the authority or a lender with which the authority has contracted to loan the proceeds derived from the issuance of bonds pursuant to section 35-75-108 to a contracting party to be used to pay the cost of an agricultural enterprise and which provides for the repayment of such loan by the contracting party. Such agreement may provide for the loans to be secured or evidenced by one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the contracting party, delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued.

(11) "Loan insurer" or "loan guarantor" means an agency, department, administration, or instrumentality, corporate or otherwise, of the federal department of housing and urban development, the farmers home administration of the federal department of agriculture, or the veterans administration of the United States, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.

(12) "Sale contract" means a contract providing for the sale of an agricultural enterprise to a contracting party and includes a contract providing for payment of the purchase price in one or more installments. If the sale contract permits title to the agricultural enterprise to pass to such contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for such contracting party to deliver to the authority or to the trustee under the indenture pursuant to which the bonds were issued one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the contracting party which provides for timely payments, including, without limitation, interest thereon for the balance of the purchase price at or prior to the passage of such title.

(13) "State" means the state of Colorado.

Source: L. 81: Entire article added, p. 1732, § 1, effective June 19. L. 2000: (5) amended, p. 306, § 1, effective April 5.

35-75-104. Colorado agricultural development authority - creation - membership.

(1) There is hereby created an independent public body politic and corporate to be known as the Colorado agricultural development authority. Said authority is constituted a public instrumentality, and its exercise of the powers conferred by this article shall be deemed and held to be the performance of an essential public function. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(2) (a) The governing body of the authority shall be a board of directors which shall consist of seven members, of which one shall be appointed by the governor, with the consent of the senate, three shall be appointed by the president of the senate, and three shall be appointed by the speaker of the house of representatives. Such members shall be residents of the state, shall have a knowledge of agricultural activity in the state, and shall represent the various agriculture operations and geographical regions of the state. No more than four of the appointed members shall be of the same political party. The members of the board first appointed shall serve for terms to be designated by the governor, expiring on June 30 of each year beginning in 1982 and ending in 1988. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, upon the expiration of the term of any member, his successor shall be appointed for a term of four years. Each member shall serve until his successor has been appointed and qualified. Any member shall be eligible for reappointment. The person making the original appointment shall fill any vacancy by appointment for the remainder of an unexpired term. The commissioner of agriculture shall be an ex officio, nonvoting member of the board.

(b) Any appointed member of the board may be removed by the person making the appointment for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless such notice and hearing have been expressly waived in writing.

Source: L. 81: Entire article added, p. 1734, § 1, effective June 19. L. 87: (2)(a) amended, p. 913, § 29, effective June 15.

Cross references: For the provisions that designate the Colorado agricultural development authority as a "special purpose authority" for the purposes of § 20 of article X of the Colorado constitution, see § 24-77-102 (15).

35-75-105. Organization meeting - chairman - personnel - surety bond - conflict of interest. (1) (a) The member of the board appointed by the governor shall call and convene the initial organizational meeting of the board and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties, and such other matters as the authority deems proper. At such meeting, and annually thereafter, the board shall elect one of its members as chairman and one as vice-chairman.

(b) The authority shall appoint an executive officer and such other personnel as it deems necessary, including an associate executive officer, who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as determined by the board.

(2) The executive officer, the associate executive officer, or any other person designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board, the minute books or journal of the board, and its official seal. Said executive officer, associate executive officer, or other person may cause copies to be made of all minutes and other records and documents of the board and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

(3) The board may delegate, by resolution, to one or more of its members or to its executive officer or associate executive officer such powers and duties as it may deem proper.

(4) Before the issuance of any bonds under this article, the executive officer and associate executive officer shall each execute a surety bond in the sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the sum of fifty thousand dollars or, in lieu thereof, the chairman of the board shall execute a blanket bond covering each member of the board, the executive officer, the associate executive officer, and the employees of the authority. Each surety bond to be conditioned upon the faithful performance of the duties of the office covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(5) No part of the revenues or assets of the authority shall inure to the benefit of, or be distributed to, its members or officers or any other private persons or entities.

(6) The authority and its corporate existence shall continue until terminated by law; except that no such law shall take effect so long as the authority has bonds, notes, or other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

Source: L. 81: Entire article added, p. 1734, § 1, effective June 19.

35-75-106. Meetings of board - quorum - expenses. (1) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of at least four of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for compensation and expenses shall be paid from funds of the authority.

Source: L. 81: Entire article added, p. 1735, § 1, effective June 19.

35-75-107. General powers and duties of authority. (1) In addition to any other powers specifically granted to the authority in this article, the authority has the following powers:

- (a) To have perpetual existence and succession as a body politic and corporate;
- (b) To adopt and from time to time amend or repeal bylaws for the regulation of its affairs and the conduct of its business, consistent with the provisions of this article;
- (c) To sue and be sued;
- (d) To have and to use a seal and to alter the same at pleasure;
- (e) To maintain an office at such place as it may designate;
- (f) To borrow money and issue bonds, notes, bond anticipation notes, or other obligations for any of its corporate purposes and to fund or refund such obligations as provided in this article;
- (g) To engage the services of private consultants and legal counsel to render professional and technical assistance and advice in carrying out the purposes of this article;
- (h) To procure insurance against any loss in connection with its property and other assets, including loans and loan notes, in such amounts and from such insurers as it may deem advisable;
- (i) To procure insurance or guarantees from any public or private entity, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority, including the power to pay premiums on any such insurance;
- (j) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this article;
- (k) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders;
- (l) To enter into loan agreements, sales contracts, and leases with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise;
- (m) To enter into contracts or agreements with lenders for the servicing and processing of loans;
- (n) To provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises and to distribute data and information concerning the encouragement and improvement of agricultural enterprises and agricultural employment in the state;
- (o) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;
- (p) To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority;
- (q) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party;
- (r) To the extent permitted under its contract with the holders of bonds of the authority, to enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, such reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed;
- (s) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article;
- (t) To do all things necessary and convenient to carry out the purposes of this article.

35-75-108. Authority - loans to or made by lenders. (1) The authority may:

(a) Make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make loans to finance agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in this state.

(b) Invest in, purchase or make commitments to invest in or purchase, or take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase, or assignment by the authority if the loan was made more than six months prior to the date of investment, purchase, or assignment by the authority.

(2) Prior to exercising any of the powers authorized in subsection (1) of this section, the authority shall require the lender to certify and agree that:

(a) The loan is, or if the loan has not yet been made will at the time of making be, in all respects a prudent investment; and

(b) Such lender will use the proceeds of the loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to finance agricultural enterprises; or, if such lender has made a commitment to make loans to finance agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make and sell the loans to the authority within a reasonable period of time.

(3) Prior to exercising any of the powers under subsection (1) of this section, the authority may, but is not obligated to:

(a) Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;

(b) Require any type of security that it deems reasonable and necessary; or

(c) Authorize the reservation of funds by lenders in such amount and subject to such conditions as the authority considers reasonable and necessary.

Source: L. 81: Entire article added, p. 1737, § 1, effective June 19.

35-75-109. Authority - rules and regulations. (1) Prior to exercising its authority under section 35-75-108 (1), the authority shall promulgate rules and regulations governing its activities authorized under this article, including, but not limited to:

(a) Procedures for the submission of requests or invitations and proposals for making loans to lenders and procedures for the investment in, purchase, assignment, and sale of loans;

(b) Procedures for reinvestment by lenders of the proceeds, or an equivalent amount, from any loan to lenders and procedures for the investment in or purchase by the authority of loans or the assignment or sale to the authority of loans to finance agricultural enterprises;

(c) The number of agricultural projects, location of the projects, and other characteristics of agricultural enterprises to be financed directly or indirectly by the authority pursuant to section 35-75-108 (1), including, to the extent reasonably possible, assurance that the agricultural enterprises to be financed by an issue of bonds or series of issues will improve employment conditions or otherwise enhance the welfare of persons in the agricultural sector;

(d) Rates, fees, charges, and other terms and conditions of originating or servicing loans in order to protect against an excessive financial return or benefit by the originator or servicer;

(e) The type and amount of collateral or security to be provided to assure repayment of loans made by the authority;

(f) The type of collateral, payment bonds, performance bonds, or other security to be provided for any loans made by a lender for construction loans;

(g) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(h) Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions, and interest rates for loans made, purchased, sold, assigned, or committed pursuant to this article;

(i) Commitment requirements for agricultural financing by lenders involving money provided directly or indirectly by the authority; or

(j) Any other matters related to the duties or exercise of the authority's powers or duties under this article.

Source: L. 81: Entire article added, p. 1738, § 1, effective June 19.

35-75-110. Notes. (1) The authority may issue from time to time its negotiable notes for any corporate purpose and may renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds.

(2) Any resolution authorizing notes of the authority or any issue of such notes may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority or any issue of bonds, and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds.

(3) All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available for such payment and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations outstanding at the time of issuance of such notes.

Source: L. 81: Entire article added, p. 1738, § 1, effective June 19.

35-75-111. Bonds. (1) (a) The authority may issue from time to time its bonds in such principal amounts as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes.

(b) In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available for payments and not otherwise pledged or from the proceeds of the sale of the bonds of the authority in anticipation of which they were issued. The bond anticipation notes shall be issued in the same manner as bonds. Such notes and the resolution authorizing them may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(2) (a) Bonds may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts of the authority as designated in the resolution of the authority under which the bonds are authorized to be issued or as designated in a trust indenture authorized by the authority.

(b) Bonds may be executed and delivered by the authority at such times, may be in such form and denominations and include such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such time or times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without the state of Colorado, may bear interest at such rate or rates per annum as determined by the authority without regard to any interest rate limitation appearing in any other law of this state, may be evidenced in such manner, may be executed by such officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either an officer of the authority or an officer of the trustee authenticating the same, may be in the form of coupon bonds which have attached interest coupons bearing the facsimile signature of an authorized officer of the authority, and may contain such provisions not inconsistent with this article all as provided

in the resolution of the authority under which the bonds are authorized to be issued or as provided in a trust indenture authorized by the authority.

(3) If deemed advisable by the authority, there may be retained in the resolution or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part of said bonds as may be specified in such resolution or in such trust indenture, at such price or prices, after such notice or notices, and on such terms and conditions as may be set forth in such resolution or in such trust indenture and as may be briefly recited on the face of the bonds. Nothing in this article shall be construed to confer on the authority the right or option to redeem any bonds except as provided in such resolution or in such trust indenture under which they are issued.

(4) The bonds or notes of the authority may be sold at public or private sale for such price or prices, in such manner, and at such times as determined by the authority, and the authority may pay all expenses, premiums, and commissions which it may deem necessary or advantageous in connection with the issuance of bonds or notes. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and deliver bonds and notes may be delegated to the executive officer by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(5) (a) Any outstanding bonds of the authority may be refunded or advance refunded at any time and from time to time by the authority by the issuance of its bonds for such purpose in a principal amount determined by the authority, which may include interest accrued or to accrue with or without giving effect to investment income and other expenses necessary to be paid in connection with such issuance.

(b) (I) Any such refunding may be effected whether the bonds to be refunded have then matured or will mature thereafter, either by sale of the refunding bonds and the application of the proceeds of such sale for the payment of the bonds to be refunded or by the exchange of the refunding bonds for the bonds to be refunded with the consent of the holders of the bonds to be so refunded, regardless of whether or not the bonds proposed to be refunded are payable on the same date or different dates or are due serially or otherwise.

(II) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may be applied, in the discretion of the authority, to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption dates or upon the purchase or at the maturity thereof and, pending such application, may be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such dates as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested or deposited in securities or depositories meeting the requirements established in part 6 of article 75 of title 24, C.R.S., maturing at such time or times as are appropriate to assure the prompt payment as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profit, if any, earned or realized on any such investment may also be applied, in the discretion of the authority, to the payment of the outstanding bonds or notes to be so refunded or to the payment of principal and interest on the refunding bonds or for any other purpose under this article. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments may be returned to the authority for use by it in any lawful manner.

(c) All such refunding bonds shall be subject to the provisions of this article in the same manner and to the same extent as other bonds issued pursuant to this article.

(6) The proceeds of any bonds, notes, bond anticipation notes, or other obligations may be used and applied to the payment of financing costs, including legal, underwriting and investment banking, accounting, and other similar costs; the funding of any reserve funds deemed necessary or advisable by the authority; interest on such bonds, notes, bond anticipation notes, or other obligations for a period not to exceed three years; and all other necessary and incidental costs and expenses.

Source: L. 81: Entire article added, p. 1739, § 1, effective June 19. L. 89: (5)(b)(II) amended, p. 1112, § 49, effective July 1.

35-75-111.5. Issuance of bonds to construct renewable energy generation facilities and electric transmission lines - renewable energy cooperatives. (1) To facilitate the transmission of electricity generated by a renewable energy cooperative established pursuant to section 7-56-210, C.R.S., the authority may issue revenue bonds in amounts sufficient to pay the following described costs of construction, upgrading, and acquisition, including any required interest on the bonds during construction, upgrading, and acquisition, plus all amounts required for the costs of bond issuance and any required reserves on the bonds:

- (a) Construction of renewable energy generation facilities;
- (b) Construction or upgrading of electric transmission lines and appurtenances to be used for the transfer of electricity at one hundred fifteen kilovolts or greater;
- (c) Acquisition of the right-of-way on which renewable energy generation facilities or electric transmission lines and appurtenances to be used for the transfer of electricity at one hundred fifteen kilovolts or greater are to be constructed; and
- (d) Construction or upgrading of electric distribution lines and appurtenances to be used to connect renewable resources or technologies to electric transmission lines and appurtenances.

(2) Revenue bonds, and interest thereon, issued pursuant to this section shall be payable from revenues derived from use of the renewable energy generation facilities or electric transmission lines constructed, upgraded, or acquired through the use of bond proceeds.

(3) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of the state, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

(4) The proceeds of bonds, revenues, and receipts derived from the construction, upgrading, or acquisition activities described in this section that are financed in whole or in part by the bonds, and interest and income earned on the deposit and investment of such proceeds, revenues, and receipts, shall not be included in state fiscal year spending for purposes of section 20 of article X of the state constitution and article 77 of title 24, C.R.S.

(5) Nothing in this section shall be construed as authorizing the contracting by the state of a debt or loan in any form, nor the pledging of the general taxes of the state. Revenue bonds issued pursuant to this section shall not be construed to be moral obligation bonds. The owners or holders of such bonds shall not look to any other revenues of the state for the payment of the bonds; shall not look to any legal, equitable, or moral obligation on the part of the state to pay any portion of the bonds; and shall not look to the state general fund or any other fund of the state for the payment of principal or interest of such obligation.

(6) Revenue bonds, including refunding revenue bonds, issued hereunder and the income derived therefrom shall be exempt from all state, county, and municipal taxation in the state, except Colorado estate taxes.

Source: L. 2004: Entire section added, p. 1122, § 3, effective May 27.

35-75-112. Negotiability of bonds. All bonds and the interest coupons applicable to such bonds are hereby declared and shall be construed to be negotiable instruments.

Source: L. 81: Entire article added, p. 1741, § 1, effective June 19.

35-75-113. Security for bonds and notes. (1) (a) The principal and interest on any bonds or notes issued by the authority may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank located within or without this state having trust powers. Such trust indenture or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the authority, including, without limitation, temporary loans, contracts, agreements, and other security or investment obligations, the fees or charges made or received by the authority, and any other moneys received or due to be received by the authority.

(b) Such trust indenture or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any of the bonds or notes as may be

reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the purposes to which proceeds of the bonds or notes may be applied, the disposition or pledging of the revenues or assets of the authority, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding, and application of all moneys. Any such trust indenture or resolution may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by any such holders.

(c) In addition any such trust indenture or resolution may contain such other provision as the authority may deem reasonable and proper for the security of the holders of any bonds or notes. All expenses incurred in carrying out the provisions of such indenture or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the authority.

(2) (a) Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenues and moneys so pledged and thereafter received by the authority shall immediately be subject to lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice of such lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Each pledge, agreement, and indenture made for the benefit or security of any of the bonds of the authority shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same are made has been fully paid or provision for such payment duly made.

(b) In the event of default in any such payment or in any agreements of the authority made as part of the contract under which the bonds were issued, whether contained in the resolutions authorizing the bonds or in any trust indenture executed as security for such bonds, said payment or agreement may be enforced by suit, mandamus, or either of such remedies.

Source: L. 81: Entire article added, p. 1741, § 1, effective June 19.

35-75-114. Personal liability. Neither the members of the board, employees of the authority, nor any person executing the bonds or notes shall be liable personally on bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

Source: L. 81: Entire article added, p. 1742, § 1, effective June 19.

35-75-115. Purchase. The authority may purchase its bonds or notes out of any available funds. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

Source: L. 81: Entire article added, p. 1742, § 1, effective June 19.

35-75-116. Payment of bonds - nonliability of state. (1) Bonds and notes issued by the authority shall not constitute or become an indebtedness, a debt, or a liability of the state, nor shall the state be liable on such bonds and notes, nor shall such bonds or notes constitute the giving, pledging, or loaning of the full faith and credit of the state, but such bonds and notes shall be payable solely from the funds provided for in this article. The issuance of bonds or notes under the provisions of this article shall not obligate the state or empower the authority, directly, indirectly, or contingently, to levy or collect any form of taxes or assessments, to create any indebtedness payable out of taxes or assessments, or to make any appropriation for their payment, and such appropriation, levy, or collection is prohibited.

(2) Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or notes authorized pursuant to this

article, but nothing in this article shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Colorado; and all bonds issued by the authority pursuant to the provisions of this article are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or with any trust indenture executed as security for such bonds and are not a debt or liability of the state of Colorado.

(3) The state shall not be liable in any event for the payment of the principal or of interest on any bonds of the authority or for the performance of any pledge, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, obligation, or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

Source: L. 81: Entire article added, p. 1742, § 1, effective June 19.

35-75-117. Exemption from taxation - securities law. The income or other revenues of the authority, all properties at any time owned by the authority, any bonds, notes, or other obligations issued pursuant to this article, the transfer of and the income, including any profit made on sale, from any such bonds, notes, or other obligations, and all trust indentures and other documents issued in connection with such bonds, notes, or other obligations shall be exempt at all times from all taxation and assessments in the state of Colorado. Bonds issued by the authority shall also be exempt from the provisions of article 51 of title 11, C.R.S.

Source: L. 81: Entire article added, p. 1743, § 1, effective June 19.

35-75-118. Fees. All expenses of the authority incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article, and no liability shall be incurred by the authority beyond the moneys which are provided pursuant to this article. For the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided pursuant to this article, the authority may borrow such moneys as may be required for the necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided pursuant to this article.

Source: L. 81: Entire article added, p. 1743, § 1, effective June 19.

35-75-119. Investment powers of authority. The authority has the power to invest any funds held in reserve, sinking funds, capital reserve funds, or any funds not required for immediate disbursement in property or in securities in which the state treasurer may legally invest funds subject to his control; and to sell from time to time such securities thus purchased and held; and to deposit any securities in any trust bank within or without the state. In addition, the authority has the power to invest any such funds in unsecured promissory notes of a national bank having the highest investment ratings. Any funds deposited in a banking institution shall be secured in such manner and subject to such terms and conditions as the board may determine, with or without payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any commercial bank incorporated under the laws of this state which may act as a depository of any funds of the authority may issue indemnifying bonds or may pledge such securities as may be required by the board.

Source: L. 81: Entire article added, p. 1743, § 1, effective June 19.

35-75-120. Proceeds as trust funds. All moneys received pursuant to this article, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, shall be deemed to be trust funds to be held and applied solely as provided in this

article. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this article, subject to such regulations as the authority and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations provides.

Source: L. 81: Entire article added, p. 1743, § 1, effective June 19.

35-75-121. Agreement of the state not to limit or alter rights of obligees. The state hereby pledges to and agrees with the holders of any bonds, notes, or other obligations issued under this article and with those parties who may enter into contracts with the authority pursuant to the provisions of this article that the state will not limit, alter, restrict, or impair the rights vested in the authority to fulfill the terms of any agreements made with the holders of bonds, notes, or other obligations authorized and issued pursuant to this article and with the parties who may enter into contracts with the authority pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of such bonds, notes, or other obligations of such parties until such bonds, notes, and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this article precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes, or other obligations of the authority or those entering into such contracts with the authority. The authority may include this pledge and undertaking for the state in such bonds, notes, or other obligations and in such contracts.

Source: L. 81: Entire article added, p. 1743, § 1, effective June 19.

35-75-122. Enforcement of rights of bondholders. Any holder of bonds issued pursuant to this article or a trustee under a trust agreement or trust indenture entered into pursuant to this article, except to the extent that his rights are restricted by any bond resolution, may protect and enforce, by any suitable form of legal proceedings, any rights under the laws of this state or granted by the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by this article or the bond resolution and to enjoin unlawful activities.

Source: L. 81: Entire article added, p. 1744, § 1, effective June 19.

35-75-123. Bonds eligible for investment. All banks, bankers, trust companies, savings and loan associations, investment companies, insurance companies and associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 81: Entire article added, p. 1744, § 1, effective June 19. **L. 89:** Entire section amended, p. 1131, § 73, effective July 1.

35-75-124. Account of activities - receipts for expenditures - report - audit. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. The state auditor may investigate the affairs of the authority, may examine the properties and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to undertakings by the authority.

Source: L. 81: Entire article added, p. 1744, § 1, effective June 19. **L. 84:** Entire section amended, p. 950, § 2, effective March 26. **L. 96:** Entire section amended, p. 1221, § 19, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

35-75-125. Federal social security act. The authority may take such action as it deems appropriate to enable its employees to come within the provisions and obtain the benefits of the federal "Social Security Act", as from time to time amended.

Source: L. 81: Entire article added, p. 1744, § 1, effective June 19.

35-75-126. Powers of authority not restricted. This article shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state but shall be construed as cumulative of any such powers. Nothing in this article shall be construed to deprive the state and its political subdivisions of their respective police powers over properties of the authority or to impair any power over such properties of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Source: L. 81: Entire article added, p. 1744, § 1, effective June 19.

35-75-127. Repeal. (Repealed)

Source: L. 81: Entire article added, p. 1745, § 1, effective June 19. **L. 84:** Entire section repealed, p. 950, § 1, effective March 26.

PART 2

AGRICULTURE VALUE-ADDED
DEVELOPMENT FUND PROGRAM

35-75-201. Legislative declaration - purpose of part. (1) The general assembly finds, determines, and declares that, due to current economic conditions throughout rural Colorado, it is in the best interests of the people of this state that measures be taken to encourage, promote, and stimulate agriculturally based economic development and employment in rural Colorado. To that end, it is the purpose of this part 2 to facilitate the processing of agricultural products and commodities within this state to further stimulate the economy and employment in rural Colorado and to serve as a resource for the state's agricultural industry.

(2) The general assembly further finds, determines, and declares that the public purpose served by the grants, loans and loan guarantees, and equity investments authorized by this part 2 preponderates over any individual interests incidentally served thereby.

Source: L. 2001: Entire part added, p. 623, § 2, effective May 30. **L. 2010:** (2) amended, (SB 10-212), ch. 412, p. 2032, § 2, effective July 1.

35-75-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Board" means the Colorado agricultural value-added development board created in section 35-75-203.

(2) "Department" means the department of agriculture.

(3) "Development facility" means a Colorado facility that either produces goods from an agricultural commodity or uses a process to produce goods from an agricultural product.

(4) "Eligible agricultural value-added cooperative" means a cooperative association formed pursuant to article 55 or 56 of title 7, C.R.S., for the purpose of operating a development facility and that meets the eligibility criteria established by the board pursuant to section 35-75-204 (2).

(5) "Fund" means the agriculture value-added cash fund created in section 35-75-205 (1).

(6) “Member” means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of article 22 of title 39, C.R.S.

(7) “Participant” means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of article 22 of title 39, C.R.S., that contributes cash funds to the board.

Source: L. 2001: Entire part added, p. 624, § 2, effective May 30. **L. 2010:** (7) amended, (SB 10-212), ch. 412, p. 2032, § 3, effective July 1.

35-75-203. Colorado agricultural value-added development board - creation - members. (1) There is hereby created, within the department, the Colorado agricultural value-added development board for the purpose of encouraging and promoting agricultural business projects that add value to agricultural products and aid the economies of rural communities.

(2) The board shall consist of seven members of the authority. The commissioner of agriculture shall be an ex officio, nonvoting member of the board.

(3) Members of the board shall receive no compensation for their service on the board, but shall be entitled to reimbursement for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable rules governing the incurring and paying of such expenses.

Source: L. 2001: Entire part added, p. 624, § 2, effective May 30.

35-75-204. Duties of board - agriculture value-added grants, loans and loan guarantees, and equity investments. (1) The board has the power to make grants, loans and loan guarantees, and equity investments to any person, including eligible agricultural value-added cooperatives, as defined in section 35-75-202 (4), for new or ongoing agricultural projects and research that add value to Colorado agricultural products and aid the economy of rural Colorado communities. The board also has the power to fund market promotion activities of the department pursuant to section 35-75-205 (2) (f).

(2) The board shall employ the following criteria in determining whether to award an agriculture value-added grant, loan, or loan guarantee:

(a) (Deleted by amendment, L. 2007, p. 943, § 1, effective May 17, 2007.)

(b) The experience, professional qualifications, and business background of the directors and consultants chosen to lead the agricultural business project shall be such as to give the project a reasonable chance of success under their leadership;

(c) The contemplated schedule and phasing of the project, whether on an annual or multi-year basis, shall be such as to give the project a reasonable chance of success within three years at a constant or declining rate of support from the board in the form of grants or loans or a combination thereof; and

(d) The economic impact on other local businesses.

(2.5) In addition to the criteria listed in subsection (2) of this section, the board may also consider:

(a) The agricultural business project’s planning for long-term success through feasibility studies, marketing plans, and business plans;

(b) The agricultural business project’s net economic benefit to the state;

(c) The agricultural business project’s net economic impact on other local businesses; and

(d) Any other criteria the board determines are necessary to carry out the purposes of this part 2.

(3) The board may reject any application for grants, loans and loan guarantees, or equity investments pursuant to this part 2.

(4) (a) The board shall require a feasibility study of a member’s rural agricultural business project concept to be performed before awarding a grant or loan.

(b) Upon a determination by the board that the project concept is feasible, the board may cause a marketing study to be performed. Such marketing study shall be designed to determine if the project concept may be operated profitably.

(c) Upon a determination by the board that the project concept may be operated profitably, the board may provide for legal assistance to set up the project. Such legal assistance shall include, but not be limited to, providing advice and assistance on the form of business entity and other assistance for which the member may qualify as well as helping the member apply for such assistance.

(5) The board may provide or facilitate grants, loans or loan guarantees, or equity investments for any person who meets the criteria set forth in this part 2 or established by the board under paragraph (d) of subsection (2.5) of this section, including, but not limited to, loans from the United States department of agriculture rural development program, subject to availability. Such financial assistance shall only be provided to feasible project concepts, and the amount of such financial assistance shall be the least amount necessary to cause the project to occur, as determined by the board. The board may structure the financial assistance in a way that causes the project to occur and also provides for a compensatory return on investment or loan payment to the board, based upon the risk of the project concept.

(6) The board may also provide for consulting services for the building and operation of the project. Such consulting services may be provided through state employees or through contracts with private entities.

(7) The board may charge the member a reasonable fee for processing an application for financial assistance or for other services performed by the board or its staff.

(8) The board may consult with other state or federal agencies as necessary to perform its duties pursuant to this part 2.

Source: L. 2001: Entire part added, p. 625, § 2, effective May 30. **L. 2007:** (1), (2)(a), and (5) amended and (2.5)(d) added, pp. 943, 944, §§ 1, 2, effective May 17. **L. 2010:** (1), IP(2), (2)(c), (3), (4)(a), (4)(c), and (5) amended, (SB 10-212), ch. 412, p. 2033, § 4, effective July 1.

35-75-205. Grants, loans and loan guarantees, and equity investments - agriculture value-added cash fund - created - repeal. (1) Moneys received by the board from public or private gifts, grants, or donations or from any other source shall be forwarded to the state treasurer and shall be credited to the agriculture value-added cash fund, which fund is hereby created. Moneys in the fund are continuously appropriated to the board and shall be used for the purpose of preparing criteria and reviewing applications as provided in section 35-75-204 and for financial or technical assistance to agricultural projects, project concepts, and research as approved by the board. All interest earned on the investment of moneys in the fund shall be credited to the fund. The board may provide or facilitate grants, loans and loan guarantees, and equity investments for agricultural projects, project concepts, or research; except that such grants, loans and loan guarantees, and equity investments shall be limited to two million dollars per project. Grants, loans and loan guarantees, and equity investments may only be provided to feasible projects and for an amount that is the least amount necessary to cause the project to occur, as determined by the board. The board may structure the grants, loans and loan guarantees, and equity investments in a way that facilitates the project and also provides for a compensatory return on investment or loan payment to the board based on the risk of the project. Any moneys credited to the agriculture value-added cash fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(1.5) (a) In state fiscal years 2009-10 through 2016-17, the general assembly shall appropriate five hundred thousand dollars, or so much thereof as has been transferred pursuant to section 39-29-109.3 (2) (h), C.R.S., from the agriculture value-added cash fund to the department, for allocation to the board to promote the feasibility and development of agricultural energy-related projects.

(b) This subsection (1.5) is repealed, effective July 1, 2017.

(2) (a) The board, upon application, may:

(I) Issue certificates of guaranty covering a first loss guarantee up to, but not more than, twenty-five percent of the loan on a declining principal basis for loans to eligible borrowers, executing a note or other evidence of a loan made for the purpose of a loan made pursuant to this part 2, but not to exceed the amount of two hundred fifty thousand dollars for any eligible borrower; and

(II) Pay from the fund to an eligible lender up to twenty-five percent of the amount, on a declining principal basis, of any loss on any guaranteed loan made pursuant to the provisions of this article in the event of default on the loan. Upon payment on the guarantee, the board shall be subrogated to all the rights of the eligible lender.

(b) The board shall charge for each loan made pursuant to this part 2 a one-time participation fee of one percent of the loan amount, which shall be collected by the eligible lender at the time of closing and paid to the board. In addition, the board may charge a special loan guarantee fee of up to one percent per annum of the outstanding principal, which fee shall be collected from the eligible borrower by the eligible lender and paid to the board. Moneys collected shall be deposited in the agriculture value-added cash fund.

(c) Moneys paid to satisfy a defaulted loan made pursuant to this part 2 shall only be paid out of the agriculture value-added cash fund.

(d) The total outstanding loans made pursuant to this part 2 shall at no time exceed an amount which, according to sound actuarial judgment, would allow immediate redemption of at least forty percent of the outstanding loans guaranteed by the fund at any one time.

(e) The board may make financial arrangements for an eligible business to purchase an existing, established development facility.

(f) The department shall, as part of the administration of the agriculture value-added development fund program created in this part 2, establish market promotion activities and may apply to the board to support such activities through disbursements from the fund.

(3) In any given year, at least ten percent of the funds granted to rural agricultural projects and project concepts shall be awarded in response to grant requests of fifty thousand dollars or less. No single rural agricultural project or project concept shall receive more than two hundred thousand dollars in grant awards from the board.

Source: L. 2001: Entire part added, p. 626, § 2, effective May 30. **L. 2006:** (1.5) added, p. 1742, § 3, effective June 6. **L. 2007:** (1) amended, p. 944, § 3, effective May 17. **L. 2008:** (1.5)(a) amended, p. 1873, § 12, effective June 2. **L. 2009:** (1.5) amended, (SB 09-124), ch. 256, p. 1162, § 1, effective July 1. **L. 2010:** (1) amended, (SB 10-212), ch. 412, p. 2034, § 5, effective July 1. **L. 2012:** (1.5) amended, (HB 12-1334), ch. 219, p. 938, § 1, effective July 1.

PET ANIMAL CARE

ARTICLE 80

Pet Animal Care and Facilities Act

35-80-101.	Short title.	35-80-106.4.	Sterilization of ownerless dogs and cats required - rules - exceptions - violations.
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		35-80-111.	Enforcement.
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35-80-113.	Civil penalties.		Pet overpopulation authority - creation - duties and powers
35-80-114.	Criminal penalties.		- pet overpopulation fund.
35-80-115.	Advisory committee.	35-80-117.	Repeal of article - sunset review.
35-80-116.	Pet animal care and facility		

35-80-101. Short title. This article shall be known and may be cited as the "Pet Animal Care and Facilities Act".

Source: L. 94: Entire article added, p. 1299, § 8, effective July 1.

35-80-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Animal shelter" means a public or private facility licensed pursuant to this article and the rules and regulations adopted pursuant thereto.

(1.5) "Bird hobby breeder facility" means any facility engaged in the operation of breeding and raising birds for the purpose of personal enjoyment that does not transfer more than thirty birds per year.

(2) "Canine hobby breeder facility" means any facility which transfers no more than twenty-four dogs per year or breeds no more than two litters per year, whichever is greater.

(2.5) (Deleted by amendment, L. 2000, p. 1398, § 4, effective May 30, 2000.)

(3) "Commission" means the state agricultural commission.

(4) "Commissioner" means the commissioner of agriculture, or the designee of the commissioner.

(5) "Committee" means the pet animal advisory committee created in section 35-80-115.

(6) "Department" means the department of agriculture.

(6.3) "Dispose" or "disposition" means adoption of a pet animal, return of a pet animal to the owner, release of a pet animal to a rescue group licensed pursuant to this article, release of a pet animal to another pet animal facility licensed pursuant to this article or to a rehabilitator licensed by the division of parks and wildlife or the United States fish and wildlife service, or euthanasia.

(6.5) "Dog breeder" means any firm, person, or corporation which is engaged in the operation of breeding and raising dogs for the purpose of selling, trading, bartering, giving away, or otherwise transferring same, excluding racing greyhounds that are not intended to be companion pets.

(6.6) "Dog breeder, large scale operation" or "large scale operation dog breeder" means a dog breeder that transfers at least one hundred dogs per year, excluding racing greyhounds that are not intended to be companion pets.

(6.7) "Dog breeder, small scale operation" or "small scale operation dog breeder" means a dog breeder that transfers at least twenty-five but no more than ninety-nine dogs per year.

(7) "Euthanasia" means to produce a humane death by techniques accepted by the American veterinary medical association.

(8) "Feline hobby breeder facility" means any facility that produces or transfers no more than twenty-four cats per year or breeds no more than three litters per year.

(8.7) "Licensed veterinarian" means a person who is licensed to practice veterinary medicine in this state pursuant to article 64 of title 12, C.R.S.

(9) "Livestock" means cattle, horses, mules, burros, sheep, poultry, swine, llama, and goats, regardless of use, and any animal that is used for working purposes on a farm or ranch, and any other animal designated by the commissioner, which animal is raised for food or fiber production.

(10) "Pet animal" means dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet, except livestock, as defined in subsection (9) of this section. "Pet animal" does not include an animal that is used for working purposes on a farm or ranch.

(11) "Pet animal facility" means any place or premise used in whole or in part, which part is used for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals. "Pet animal facility" also includes any individual animals kept by such a facility as breeding stock, such licensing of individual breeding stock to be inclusive in the pet animal facility license. "Pet animal facility" shall not mean a common carrier engaged in intrastate or interstate commerce. For purposes of this article, two or more animal facilities that have the same or a similar purpose and operate from one place or premises shall be considered a single pet animal facility.

(11.2) "Pet animal rescue" means any person licensed pursuant to this article who accepts pet animals for the purpose of finding permanent adoptive homes for animals and does not maintain a central facility for keeping animals, but rather uses a system of fostering in private homes or boarding or keeping pets in licensed pet animal facilities.

(11.4) "Prospective owner" means a person who has no prior rights of ownership to the pet animal to be adopted.

(11.6) "Release" means adoption, sale, or other transfer to the permanent custody of an owner by an animal shelter or pet animal rescue.

(11.8) "Small animal breeder facility" means any facility that transfers more small mammals than the maximum number established by the commissioner by rule for each particular species.

(12) "Small animal hobby breeder facility" means any facility that transfers a number of small mammals that is less than the maximum number established by the commissioner by rule for each particular species.

(13) (Deleted by amendment, L. 2000, p. 1398, § 4, effective May 30, 2000.)

(14) "Sterilization" means the act of permanently rendering an animal incapable of reproduction. The term applies to surgical methods, including the procedures commonly referred to as spay and neuter, and nonsurgical methods and technologies approved by the United States food and drug administration, the United States department of agriculture, or other appropriate designated federal authority.

Source: **L. 94:** Entire article added, p. 1300, § 8, effective July 1. **L. 98:** (11) and (12) amended and (11.8) added, p. 119, § 1, effective March 24. **L. 99:** (1) amended and (1.5) and (6.3) added, p. 356, § 1, effective August 4. **L. 2000:** (2.5) and (13) amended and (6.6) and (6.7) added, p. 1398, § 4, effective May 30. **L. 2001:** (8) amended, p. 1262, § 1, effective June 5. **L. 2008:** (8.7), (11.2), (11.4), (11.6), and (14) added, p. 199, § 1, effective January 1, 2009. **L. 2009:** (10) amended, (SB 09-118), ch. 327, p. 1743, § 14, effective July 1.

35-80-103. Scope of article. (1) Any person who operates a pet animal facility that is licensed as of December 31, 1993, by the United States department of agriculture shall not be subject to the routine inspection provisions of this article but shall be subject to all other provisions, including but not limited to those concerning licensure and investigation of reported violations.

(2) The provisions of this article shall not apply to:

(a) Any veterinary hospital which boards pet animals for the purpose of veterinary medical care only and does not actively solicit boarding business in any way;

(b) Any research facility, circus, or publicly or privately owned zoological park or petting zoo licensed or registered under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended;

(c) Any bird hobby breeder facility, canine hobby breeder facility, feline hobby breeder facility, small animal hobby breeder facility, or any other hobby breeder facility as defined by the commissioner which is specific to other pet animal species;

(d) Any pet animal training facility where the pet animal owner or such owner's designee, other than a training facility operator, is present during the duration of the animal's stay;

(e) Any kennel operated for the breeding or sale or racing of racing greyhounds that are not intended to be companion pets;

(f) Any facility licensed pursuant to article 60 of title 12, C.R.S., for the racing of greyhounds;

(g) Any wildlife regulated by the division of parks and wildlife or department of natural resources;

(h) Livestock, as defined in section 35-80-102 (9);

(i) Any owner, breeder, handler, or trainer while transporting a pet animal to or from or exhibiting or competing at any event licensed, regulated, or sanctioned by the American kennel club, united kennel club, or any other nationally recognized registering organization.

(3) (a) Any pet animal facility structure in existence and licensed by the department of health through 1991 that was in compliance with that department's regulations for such licenses shall be exempt from any conflicting requirements of this article or rules and regulations of the commissioner concerning physical premises.

(b) Any laws or rules promulgated for pet animal facilities shall not require the construction of any new buildings or major reconstruction of the existing physical premises of facilities specified in paragraph (a) of this subsection (3).

Source: L. 94: Entire article added, p. 1301, § 8, effective July 1. L. 2000: (2)(i) added, p. 1398, § 5, effective May 30. L. 2001: (2)(i) amended, p. 1262, § 2, effective June 5.

35-80-104. Pet animal facility license required. Any person operating a pet animal facility shall possess a valid pet animal facility license issued by the commissioner in accordance with this article and any rules and regulations adopted by the commissioner in accordance with the provisions of this article.

Source: L. 94: Entire article added, p. 1302, § 8, effective July 1.

35-80-105. Pet animal facility - licensure requirements - application - fees.

(1) Each applicant for a pet animal facility license shall submit an application providing all required information in the form and manner required by the commissioner.

(2) Each location of a pet animal facility shall be separately licensed.

(3) If a pet animal facility operates under more than one business name from a single location:

(a) No additional pet animal facility license shall be required for the different business names;

(b) The pet animal facility operator must maintain separate records pursuant to section 35-80-107 for each such business name; and

(c) The name of each business providing services that are related to those of a pet animal facility shall be listed with the commissioner in the form and manner designated. The commissioner may require that a separate fee be paid for each such business name.

(4) Each applicant for a pet animal facility license shall pay an annual license fee in the amount specified by rule of the commissioner, which amount shall not exceed three hundred fifty dollars per license.

(5) Each pet animal facility license shall expire on a date specified by the commissioner by rule.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in the application or reports previously submitted within fifteen days of any such change.

(7) Licenses issued pursuant to this article shall not be transferable.

(8) Each pet animal facility licensed pursuant to this article shall display in a conspicuous place signage that contains contact information for the office or other appropriate department subdivision that administers this article.

Source: L. 94: Entire article added, p. 1302, § 8, effective July 1. L. 2000: (4) amended, p. 1398, § 6, effective May 30. L. 2003: (4) amended, p. 2095, § 5, effective July 1. L. 2009: (5) amended and (8) added, (SB 09-118), ch. 327, pp. 1742, 1743, §§ 9, 15, effective July 1.

35-80-106. Pet animal facility license - renewal. (1) Each pet animal facility shall apply to renew its license on or before the expiration date of the license. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the required renewal fee.

(2) If the application for renewal is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed. No license shall be renewed until the renewal fee and any penalty fee are paid.

(3) If the application and fee for renewal are postmarked later than one calendar month after the expiration date of the license, the license shall not be renewed and the pet animal facility shall apply for a new license.

(4) The commissioner may refuse to renew a license pursuant to this section for failure to pay an outstanding civil penalty imposed under section 35-80-113.

Source: L. 94: Entire article added, p. 1303, § 8, effective July 1. L. 2004: (4) added, p. 1894, § 1, effective June 4. L. 2009: (1) to (3) amended, (SB 09-118), ch. 327, p. 1742, § 10, effective July 1.

35-80-106.3. Animal holding periods - disposition of unclaimed animals - immunity from actions over disposition of a pet animal. (1) Any pet animal held by or in the custody of a licensed animal shelter, whether public or private, and not reclaimed by the owner shall be held by the animal shelter for a minimum of five days after acquisition by the animal shelter before it may become available for adoption or otherwise disposed of at the discretion of the animal shelter; except that a shelter supervisor may determine that a pet animal without identification, including but not limited to a microchip or collar, may be disposed of in three days if such shelter supervisor determines the shelter has no additional resources for such pet animal or determines that such pet animal is dangerous. For purposes of this section, "days" means days during which the shelter is open to the public. If the animal shelter acquires the pet animal from the owner or an authorized representative of the owner, the pet animal becomes the property of the animal shelter at the time of transfer of the pet animal, and the pet animal may be disposed of by and at the discretion of the animal shelter. If the pet animal is abandoned, as defined in section 18-9-201 (1), C.R.S., the pet animal becomes the property of the animal shelter upon acquisition and may be disposed of by and at the discretion of the animal shelter. The animal shelter shall be the steward of stray animals for the purposes of providing prophylactic veterinary care under the written protocol and direction of the shelter veterinarian. Pet animals, which in the opinion of a veterinarian or the animal shelter supervisor, if a veterinarian is not available, are experiencing extreme pain or suffering, may be disposed of immediately by the animal shelter through euthanasia after the animal shelter has exhausted reasonable efforts to contact the owner; however, for pet animals with identification, the animal shelter shall exhaust reasonable efforts to contact the owner for up to twenty-four hours.

(2) An animal shelter and any employee thereof that complies with the minimum holding period as set forth in subsection (1) of this section or that disposes of a pet animal in accordance with the provisions of subsection (1) of this section for owner-surrendered animals, abandoned animals, or suffering animals shall be immune from liability in a civil action brought by the owner of a pet animal for the shelter's disposition of a pet animal.

(3) Nothing in this section shall preclude a town, city, city and county, or county from adopting, maintaining, or enforcing an ordinance that exceeds the minimum holding period as set forth in subsection (1) of this section. Nothing in this section shall preclude a licensed animal shelter, whether public or private, from adopting, maintaining, or following a policy that exceeds the minimum holding period as set forth in subsection (1) of this section.

Source: L. 99: Entire section added, p. 356, § 2, effective August 4. L. 2001: Entire section amended, p. 1262, § 3, effective June 5.

35-80-106.4. Sterilization of ownerless dogs and cats required - rules - exceptions - violations. (1) An animal shelter or pet animal rescue shall not release a dog or cat to a prospective owner unless:

(a) The animal has been sterilized by a licensed veterinarian; or

(b) (I) The prospective owner signs an agreement to have the animal sterilized by a licensed veterinarian within ninety days after the date of release and deposits a fee, in an amount specified by rule of the commissioner, with the animal shelter or pet animal rescue.

(II) Upon receiving a written statement from the licensed veterinarian who performed the sterilization procedure that the dog or cat has been sterilized, the animal shelter or pet animal rescue shall refund the deposit to the prospective owner.

(III) If the prospective owner fails to provide the animal shelter or pet animal rescue with a written statement from a licensed veterinarian stating that the veterinarian performed a sterilization procedure on the dog or cat within ninety days after signing the agreement:

(A) The prospective owner shall forfeit the deposit and the animal shelter or pet animal rescue shall forward the amount of the deposit to the pet overpopulation fund created in section 35-80-116.5 (5) or a local dedicated spay and neuter fund; and

(B) The animal shelter or pet animal rescue may promptly reclaim the animal from the prospective owner.

(2) If a licensed veterinarian declares in writing that a sterilization procedure could jeopardize the life or health of the dog or cat, the procedure may be delayed until such time that a veterinarian determines that the dog or cat is fit to undergo the sterilization procedure. At such time, the prospective owner shall have the animal sterilized. If the determination of unfitness for sterilization has been made prior to release, the animal shelter or pet animal rescue may release the dog or cat to the prospective owner, subject to the provisions of this subsection (2).

(3) This section shall not apply to:

(a) The release of a dog or cat to a person with prior and continuing ownership rights to the dog or cat who is reclaiming the animal from an animal shelter or pet animal rescue;

(b) The transfer of an animal from an animal shelter or pet animal rescue to another animal shelter or pet animal rescue or to a veterinarian;

(c) Animal shelters or pet animal rescues with existing sterilization programs that ensure that every dog or cat is sterilized before being released; or

(d) Public animal shelters eligible for waiver of licensing fees pursuant to rules promulgated by the commissioner.

(4) Nothing in this section shall preclude a town, city, county, or city and county from adopting, maintaining, or enforcing an ordinance that exceeds the minimum requirements adopted by the commissioner in implementing and enforcing this section. Nothing in this section shall preclude a licensed animal shelter, whether public or private, from adopting, maintaining, or following a policy that exceeds the minimum requirements adopted by the commissioner in implementing and enforcing this section.

Source: L. 2008: Entire section added, p. 200, § 2, effective January 1, 2009.

35-80-106.5. Psittacine bird leg band - fee - rules. (1) Each applicant for a Colorado psittacine bird leg band shall be issued a bird leg band number by the commissioner after paying the required application fee, and each holder of a bird leg band number shall pay an annual renewal fee on or before the annual date set by the commissioner.

(2) The application, fees, and annual renewal date described in subsection (1) of this section shall be set forth in rule adopted by the commissioner.

Source: L. 98: Entire section added, p. 119, § 2, effective March 24. **L. 2009:** Entire section amended, (SB 09-118), ch. 327, p. 1742, § 11, effective July 1.

35-80-107. Record-keeping requirements. Each pet animal facility shall keep and maintain records in the form and manner designated by the commissioner. Such records shall be retained for a period of two years and shall be kept at the address specified in the license application for the pet animal facility.

Source: L. 94: Entire article added, p. 1303, § 8, effective July 1.

35-80-108. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person or entity:

(a) To perform any of the acts of a pet animal facility for which licensure is required without possessing a valid license under this article;

(b) To solicit, advertise, or offer to perform any of the acts for which licensure as a pet animal facility is required without possessing a valid license to perform such acts;

(c) To refuse to comply with a cease-and-desist order issued pursuant to section 35-80-111;

(d) To refuse or fail to comply with the provisions of this article;

(e) To make a material misstatement in a license application, a license renewal application, or to the department during an official investigation;

(f) To impersonate any state, county, city and county, or municipal official or inspector;

(g) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or any lawful order issued by the commissioner;

(h) To aid or abet another in any violation of this article or any rule promulgated by the commissioner under the provisions of this article;

(i) To import or have in such person's possession for the purpose of selling, trading, giving, or otherwise transferring certain species of birds designated by the commissioner that have not been legally banded with a leg band applied during the prefeathered stage of development and appropriate to the size and species of the bird;

(j) To sell, barter, exchange, or otherwise transfer, possess, import, or cause to be imported into this state:

(I) Any type of turtle with a length in carapace of less than four inches; except that a person may possess a turtle that the person has bred with a length in carapace of less than four inches; or

(II) (A) Any species of nonhuman primate.

(B) Such prohibitions, with respect to nonhuman primates, shall not apply to a research facility or exhibitor properly licensed or registered under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended, nor shall they apply to the keeping of a nonhuman primate as a household pet by any person who owned such primate on or before July 1, 1973, or to the keeping by a disabled person of a nonhuman primate specially trained to assist such person.

(k) To sell, transfer, or adopt dogs or cats under the age of eight weeks;

(k.5) To transfer cats under the minimum weight limit set by rule of the commissioner;

(l) To sell, transfer, or adopt guinea pigs, hamsters, or rabbits under the age of four weeks, and such other pet animal species as may be specified by the commissioner; and

(m) To alter or falsify any certificate of veterinary inspection or any other certificate of veterinary health.

(1.5) Paragraphs (i), (j), (k), and (l) of subsection (1) of this section shall apply to all persons and entities, including those specifically exempted under section 35-80-103 (1), (2) (a), (2) (c), (2) (d), and (2) (e).

(2) It is unlawful and a violation of this article for any person operating a pet animal facility:

(a) To refuse to permit entry or inspection in accordance with section 35-80-110;

(b) To sell, offer for sale, barter, exchange, or otherwise transfer immature domestic fowl in lots of less than twenty-five as pets;

(c) To sell, offer for sale, barter, exchange, or otherwise transfer raccoons or other animal species of wildlife that are prohibited to be kept as pets by the division of parks and wildlife in the department of natural resources;

(d) To import or cause to be imported any pet animal for the purpose of sale, resale, trade, or barter by a pet animal facility operator unless such operator is the holder of a valid pet animal facility license issued pursuant to this article;

(e) To allow a license issued pursuant to this article to be used by an unlicensed person;

(f) To make any misrepresentation or false promise through advertisements, employees, agents, or otherwise in connection with the business operations licensed pursuant to this article or for which an application for a license is pending; and

(g) To fail to take reasonable care to release for sale, trade, or adoption only those pet animals that are free of undisclosed disease, injury, or abnormality.

(3) It is unlawful and a violation of this article for any employee or official of the department or any person designated by the commissioner pursuant to section 35-80-109 (6) to disclose or use for his or her own advantage any information derived from any reports or records submitted to the department pursuant to section 35-80-110 or to reveal such information to anyone except authorized persons, including officials or employees of the state, the federal government, and the courts of this or other states.

(4) The failure by any person to comply with the provisions of paragraph (a) or (b) of subsection (1) of this section or paragraph (f) of subsection (2) of this section is a deceptive trade practice and is subject to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 94: Entire article added, p. 1303, § 8, effective July 1. L. 98: (1)(i) amended, p. 119, § 3, effective March 24. L. 2000: (1)(k) and (1)(l) amended and (1)(m) added, p. 1399, § 7, effective May 30. L. 2003: (1)(k.5) added, p. 2095, § 6, effective July 1. L. 2009: (1)(j)(I) and (1)(j)(II)(B) amended, (SB 09-118), ch. 327, p. 1743, § 13, effective July 1.

35-80-109. Powers and duties of commissioner - rules. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) Minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care, medical treatment, sterilization of dogs and cats released to prospective owners from animal shelters and pet animal rescues, and method of operation, including the minimum holding period for and disposition of stray or abandoned pet animals that are, in the opinion of the commissioner, necessary to carry out the provisions of this article; except that each holding period shall comply with section 35-80-106.3 (1);

(a.5) The minimum weight requirement for the transfer of cats;

(b) Maintenance of records concerning health care, euthanasia, and transactions involving pet animals;

(c) The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(d) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition or the denial, restriction, suspension, or revocation of any license authorized under this article; and

(e) (I) The amount of any license fee for a pet animal facility license. Such license fee may be different for different classifications and subclassifications of any license authorized under this article. The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing this article and any rules adopted pursuant thereto.

(II) Repealed.

(3) The commissioner is authorized to conduct hearings required under sections 35-80-112 and 35-80-113 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(4) The commissioner is authorized to establish the annual date or dates on which licenses and psittacine bird leg bands issued pursuant to this article shall expire.

(5) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or with any agency of the United States government for the purpose of carrying out the provisions of this article, receiving grants-in-aid, and securing uniformity of rules.

(6) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(7) The commissioner shall appoint an advisory committee pursuant to section 35-80-115.

Source: L. 94: Entire article added, p. 1305, § 8, effective July 1. L. 2001: (2)(a) amended, p. 1263, § 4, effective June 5. L. 2003: (2)(a.5) added, p. 2095, § 7, effective July 1. L. 2008: IP(2) and (2)(a) amended, p. 201, § 3, effective January 1, 2009. L. 2009: (2)(e) and (4) amended, (SB 09-118), ch. 327, pp. 1741, 1743, §§ 4, 12, effective July 1.

Editor's note: Subsection (2)(e)(II)(C) provided for the repeal of subsection (2)(e)(II), effective July 1, 2011. (See L. 2009, p. 1741.)

35-80-110. Inspections - investigations - access - subpoena. (1) The commissioner, upon his or her own motion or upon the complaint of any person, may make any investigations necessary to ensure compliance with this article.

(2) Complaints of record made to the commissioner and the results of his or her investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(3) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To those portions of all buildings, yards, pens, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article; and

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article.

(3.5) After the denial, suspension, or revocation of a license for a pet animal facility, the commissioner shall have free and unimpeded access to the areas and records that are reasonably necessary to verify that operation of such a pet animal facility has ceased. The commissioner shall have such access upon consent or upon obtaining a search warrant to the following areas and records:

(a) To those portions of all buildings, yards, pens, and other areas in which animals are suspected of being kept, handled, or transported without the appropriate license; and

(b) To all records that are equivalent to those required to be kept for the purpose of carrying out the provisions of this article. The commissioner may make copies of such records for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article.

(4) The commissioner shall have full authority to administer oaths and take statements, issue subpoenas requiring the attendance of witnesses before him or her, and require the production of all books, memoranda, papers and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: L. 94: Entire article added, p. 1307, § 8, effective July 1. L. 2000: (3.5) added, p. 1399, § 8, effective May 30.

35-80-111. Enforcement. (1) The commissioner or the commissioner's designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, he or she may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule promulgated pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at such person's discretion, a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of this article.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(3) Whenever the commissioner possesses sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order issued under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 94: Entire article added, p. 1307, § 8, effective July 1.

ANNOTATION

The commissioner is not required to plead or prove irreparable injury or inadequacy of a remedy at law when seeking either a temporary restraining order or preliminary or permanent injunctive relief upon showing that a person has engaged in or is about to engage in a violation of this act. *Kourlis v. District Court, El Paso County*, 930 P.2d 1329 (Colo. 1997).

The court abused its discretion by placing an unlicensed facility in a more advantageous position than a facility that has initiated a license application and demonstrated eligibility to hold a license prior to receiving and housing animals. *Kourlis v. District Court, El Paso County*, 930 P.2d 1329 (Colo. 1997).

In the judicial enforcement proceeding under this act, the normally applicable irreparable injury and posting of security requirements under C.R.C.P. 65 do not apply. The

usually applicable discretion to postpone the effective date of agency action under the Administrative Procedures Act, which the court may issue upon a finding of irreparable injury pending judicial review, does not apply to this statute. *Kourlis v. District Court, El Paso County*, 930 P.2d 1329 (Colo. 1997).

The district court incorrectly utilized the balancing of the equities and public interest factors set forth in *Rathke v. McFarlane*, 648 P.2d 648 (Colo. 1982), which resulted in the continued operation of an unlicensed facility contrary to the act. In the absence of compelling evidence to the contrary, the public interest, and equitable considerations having to do with that interest, favored enforcement of the statutory licensure requirement. *Kourlis v. District Court, El Paso County*, 930 P.2d 1329 (Colo. 1997).

35-80-112. Disciplinary actions - denial of license. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, restrict, or revoke any license authorized under this article if the applicant or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of cruelty to animals as defined in article 9 of title 18, C.R.S., or any similar statute of any other state;

(c) Has had an equivalent license denied, revoked, or suspended by any authority;

(d) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding the care of animals when requested by the commissioner; or

(e) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) No licensee whose license has been revoked may apply or reapply for a license under this article until two years from the date of such revocation.

Source: L. 94: Entire article added, p. 1308, § 8, effective July 1.

35-80-112.5. Denial of license - animal cruelty conviction. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may deny, refuse to renew, or revoke any license authorized under this article if the applicant or licensee has been convicted of cruelty to animals pursuant to article 9 of title 18, C.R.S., or any similar statute of any other state.

(2) Notwithstanding subsection (1) of this section, the commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., shall deny, refuse to renew, or revoke any license authorized under this article if the applicant or licensee has been convicted, at any time, of one or more violations of section 18-9-202, C.R.S., the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal which needlessly injures, mutilates, or kills an animal.

Source: L. 2000: Entire section added, p. 1399, § 9, effective May 30.

35-80-113. Civil penalties. (1) Any person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may:

(a) Bring suit to recover the amount of the civil penalty plus costs and attorney fees by action in any court of competent jurisdiction; or

(b) Refuse to renew any license authorized under this article that was issued to a person who has not paid the civil penalty pursuant to section 35-80-106 (4).

(4) Repealed.

Source: L. 94: Entire article added, p. 1309, § 8, effective July 1. **L. 2004:** (3) amended, p. 1894, § 2, effective June 4. **L. 2009:** (4) repealed, (SB 09-118), ch. 327, p. 1742, § 8, effective July 1.

35-80-114. Criminal penalties. Any person who violates the provisions of section 35-80-108 (1) (a), (1) (b), (1) (c), (1) (f), or (1) (m) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 94: Entire article added, p. 1309, § 8, effective July 1. **L. 2000:** Entire section amended, p. 1400, § 10, effective May 30. **L. 2002:** Entire section amended, p. 1552, § 330, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

35-80-115. Advisory committee. (1) There is hereby established a pet animal advisory committee to advise the commissioner in establishing regulations under this article and to provide ongoing review of this article. The members of the advisory committee shall

receive no compensation or reimbursement from the state of Colorado or the department for expenses incurred in the performance of their duties. The advisory committee shall consist of seventeen persons appointed by the commissioner as follows:

- (a) One person who represents animal rescue;
 - (b) One person who represents bird breeders;
 - (c) One person who represents small scale operation dog breeders;
 - (d) One person who represents cat breeders;
 - (e) One person who represents small animal breeders;
 - (f) One person who represents boarding kennels;
 - (f.5) One person who represents the "dog day care industry", which term means premises on which dogs are kept primarily for the purpose of short-term care;
 - (g) One person who represents pet groomers;
 - (h) One person who represents pet animal retailers;
 - (i) One person who represents pet animal wholesalers;
 - (j) One person who represents animal control officers;
 - (k) One person who represents animal shelters;
 - (l) One veterinarian licensed pursuant to article 64 of title 12, C.R.S.;
 - (m) Three members of the general public, none of whom shall represent or have a financial interest in any of the groups listed in this subsection (1); and
 - (n) One person who represents large scale operation dog breeders.
- (2) All members of the advisory committee shall be residents of this state.
- (3) In the event of a vacancy on the advisory committee prior to the completion of the member's full term, the commissioner shall appoint a person to complete the remainder of the term. Such person shall represent the same group as the member he or she is replacing, pursuant to subsection (1) of this section.
- (4) The initial appointments of the animal rescue representative, the small animal breeder, the pet animal wholesaler, one member from the general public, and the large scale operation dog breeder shall expire on January 1, 1995. The initial appointments of the bird breeder, the representative of boarding kennels, the representative of animal control officers, the small scale operation dog breeder, and one member from the general public shall expire on January 1, 1996. The initial appointment of all other members shall be for a term of three years. Thereafter, members of the advisory committee shall serve for terms of three years.
- (5) Repealed.

Source: L. 94: Entire article added, p. 1309, § 8, effective July 1. L. 2000: (1)(c), (1)(n), (4), and (5)(a) amended, p. 1400, § 11, effective May 30. L. 2009: IP(1) amended, (1)(f.5) added, and (5) repealed, (SB 09-118), ch. 327, p. 1741, §§ 5, 6, effective July 1.

35-80-116. Pet animal care and facility fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the pet animal care and facility fund, which fund is hereby created. All moneys credited to the fund shall be a part of the fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. Notwithstanding the provisions of this section to the contrary, all interest derived from the deposit and investment of this fund shall be credited to the general fund, in accordance with section 24-36-114, C.R.S. The general assembly shall make annual appropriations from the fund to the department of agriculture for direct and indirect expenses incurred in carrying out the purposes of this section.

Source: L. 94: Entire article added, p. 1310, § 8, effective July 1.

35-80-116.5. Pet overpopulation authority - creation - duties and powers - pet overpopulation fund. (1) There is hereby created the Colorado pet overpopulation authority, also referred to in this section as the "authority", which shall be a body corporate and a political subdivision of the state. The authority is not an agency of state government

and is not subject to administrative direction by any state agency except as provided in this article.

(2) (a) The powers of the Colorado pet overpopulation authority shall be vested in a board of directors consisting of the following:

- (I) One representative of the animal assistance foundation or its successor organization;
- (II) One representative of the Colorado federation of animal welfare agencies or its successor organization;
- (III) One representative of a state veterinary medical association;
- (IV) One representative of an association organized for Colorado animal control officers;
- (V) One representative from the department of agriculture;
- (VI) One member from an animal rescue organization;
- (VII) One member of the general public with an interest in animal welfare; and
- (VIII) One representative of western Colorado.

(b) The commissioner shall appoint the board members to three-year terms; except that three of the members appointed on September 1, 2001, shall serve an initial term of two years. Each member shall serve at the pleasure of the commissioner and shall continue in office until the member's successor is appointed and qualified. Initial members of the authority shall be appointed no later than September 1, 2001.

(c) On the expiration of the term of a member of the board, that member's successor shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy, the commissioner shall appoint a person who shall serve for the unexpired term.

(3) (a) Each board member shall meet the following qualifications at the time of appointment and throughout the member's term of office:

- (I) Residency in this state; and
- (II) Demonstration of an active interest in the education of the community regarding the benefits of pet overpopulation control in Colorado.

(b) The commissioner shall immediately declare the office of any member of the board vacant whenever the commissioner finds that the member is not qualified under this subsection (3) or that the member is unable to perform the duties of the office.

(c) Members shall serve without compensation for any service provided to the Colorado pet overpopulation authority. Members shall not receive any reimbursement from the board for any expenses incurred fulfilling their responsibilities pursuant to this section.

(4) The board may:

(a) Adopt an education program concerning pet overpopulation with emphasis on the importance of spaying and neutering to control pet overpopulation;

(b) Develop, adopt, and implement a process to fund and expend moneys for the activities and responsibilities of the board. Funding for the board includes the moneys available in the pet overpopulation fund created in subsection (5) of this section.

(c) Accept gifts, grants, and donations, including personal services, for the activities and responsibilities of the board. Any gift, grant, or donation other than personal services shall be deposited into the pet overpopulation fund created in subsection (5) of this section.

(d) Develop, adopt, and implement a cooperative process to work with local veterinarians, licensed animal shelters, and local communities concerning animal sheltering and pet overpopulation control in this state.

(5) (a) Donations collected pursuant to subsection (4) of this section and section 39-22-2201, C.R.S., shall be transmitted to the state treasurer and credited to the pet overpopulation fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(b) All unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and not revert back to the general fund or any other fund or be used for any purpose other than the purposes set forth in this section. Such moneys shall be appropriated continually to the state treasurer, who shall transfer all available moneys in the pet overpopulation fund to the pet overpopulation authority at least quarterly unless the board expressly requests otherwise. The board shall expend moneys from the pet overpopulation fund for the implementation of this section.

(c) When expending funds to implement this section, the Colorado pet overpopulation authority shall give priority to the areas that have an insufficient number of pet animal veterinary resources to adequately meet local needs.

(d) There is hereby created in the pet overpopulation fund the adopt a shelter pet account, which consists of moneys donated to qualify for the adopt a shelter pet special license plate pursuant to section 42-3-234, C.R.S.

(e) The authority shall use the moneys in the adopt a shelter pet account to support the spay and neutering and other medical costs of animals in animal shelters and rescues or to support overpopulation education programs; except that up to ten percent of the moneys in the adopt a shelter pet account may be used for the administration of the account.

(6) Except as provided in section 42-3-234, C.R.S., the Colorado pet overpopulation authority, created pursuant to this section, shall not be funded by or through any state agency.

(7) Nothing in this section shall be construed to authorize the Colorado pet overpopulation authority to promulgate rules to implement this section.

Source: **L. 2001:** Entire section added, p. 1053, § 1, effective August 8. **L. 2010:** (2)(a) and (6) amended and (5)(d) and (5)(e) added, (HB 10-1214), ch. 394, pp. 1871, 1872, §§ 1, 2, effective August 11.

35-80-117. Repeal of article - sunset review. (1) This article is repealed, effective July 1, 2014.

(2) Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 94:** Entire article added, p. 1311, § 8, effective July 1. **L. 2000:** (1) amended, p. 1400, § 12, effective May 30. **L. 2009:** (1) amended, (SB 09-118), ch. 327, p. 1740, § 1, effective July 1.

ARTICLE 81

Hybrid Animals

35-81-101. Legislative declaration. 35-81-102. Study of hybrid animals.

35-81-101. Legislative declaration. (1) The general assembly hereby determines and declares that:

(a) Hybrid canids and felines may pose a significant threat to other animals and humans because of their unpredictable nature;

(b) Wolf hybrids in particular may pose a threat to humans and have been declared responsible for killing two children each year in the United States;

(c) Ten states prohibit the breeding and maintenance of wolf hybrids;

(d) Most hybrid canids and felines are abandoned or killed when they reach two to three years of age and exhibit their wild nature, and some ultimately are contained in hybrid-animal refuges.

(2) The general assembly further determines that problems caused by hybrid canids and felines, and the lack of definitive information concerning the same, warrant a study of:

(a) The behavior of such animals;

(b) The extent of the problem in this state resulting from or projected to result from hybrid canids and felines;

(c) The regulation of the breeding, care, and maintenance of hybrid canids and felines that is necessary to protect the health, welfare, and safety of the residents of this state and livestock and other animal life.

Source: **L. 97:** Entire article added, p. 553, § 1, effective April 24.

35-81-102. Study of hybrid animals. (1) The commissioner of the department of agriculture is hereby authorized to appoint and convene an advisory group to study the behavior of hybrid canids and felines including, but not limited to, wolf hybrids, which study shall include a review of any incidents involving property damage and personal injury caused by such animals. The advisory group shall consist of the commissioner of the department of agriculture or the commissioner's designee, a veterinarian, representatives from the division of parks and wildlife, wolf-refuge owners, hybrid canid or feline breeders, animal-welfare agencies, and the agricultural and environmental communities.

(2) No later than January 15, 1998, the department shall present legislative committees of reference with a summary of its findings, including, if necessary, proposals for legislation.

(3) For purposes of section 35-81-101 and this section, a "hybrid canid or feline" means an animal produced by breeding a wild canid or feline with a domestic canid or feline, and that animal's progeny. "Wolf hybrid" means an animal produced by breeding a wolf with a domestic canine, and that animal's progeny.

Source: L. 97: Entire article added, p. 553, § 1, effective April 24.

TITLE 36

NATURAL RESOURCES — GENERAL



TITLE 36

NATURAL RESOURCES - GENERAL

PUBLIC LANDS AND RIVERS

General and Administrative

- Art. 1. State Board of Land Commissioners, 36-1-100.3 to 36-1-154.
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PUBLIC LANDS AND RIVERS

General and Administrative

ARTICLE 1

State Board of Land Commissioners

Cross references: For composition, membership, and duties of the state board of land commissioners, see §§ 9 and 10 of art. IX, Colo. Const.

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36-1-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "Mineral resources" means those commodities subject to regulation under articles 32, 32.5, 33, and 60 of title 34, C.R.S., including but not limited to oil, gas, coal, sand, gravel, and other minerals.

Source: L. 97: Entire section added, p. 832, § 1, effective May 21.

36-1-101. Record of proceedings. The state board of land commissioners shall keep a complete record of its proceedings in a suitable book and shall preserve all important papers and documents pertaining to the state lands.

Source: L. 19: p. 637, § 1. **C.L.** § 1146. **CSA:** C. 134, § 44. **CRS 53:** § 112-3-1. **C.R.S. 1963:** § 112-3-1.

36-1-101.5. Appointment of members - duties. (1) The state board of land commissioners shall be composed of five members appointed by the governor, with the consent

of the senate, one of whom shall be elected by the board as its president. The board shall meet at least once every month.

(2) The governor shall endeavor to appoint members of the board who reside in different geographic regions of the state. Not more than three members of the board may be of any one major political party. The board shall be composed of:

- (a) One person with substantial experience in production agriculture;
- (b) One person with substantial experience in public primary or secondary education;
- (c) One person with substantial experience in local government and land use planning;
- (d) One person with substantial experience in natural resource conservation; and
- (e) One citizen at large.

(3) (a) The term of each member shall be for four years. No member shall serve more than two consecutive terms. Members of the board shall be subject to removal, and vacancies on the board shall be filled as provided in section 6 of article IV of the state constitution.

(b) and (c) Repealed.

(4) The members of the state board of land commissioners shall not, by virtue of their appointment, be employees of the state. The board members shall be reimbursed for their reasonable and necessary expenses and receive a per diem of fifty dollars per day for each day the member attends a board meeting, subject to appropriation by the general assembly from the income from the trust lands.

(5) The individual members of the state board of land commissioners shall have no personal liability for any action or failure to act as long as such action or failure to act does not involve willful or intentional malfeasance or gross negligence.

(6) (a) The people of the state of Colorado have recognized in section 10 of article IX of the state constitution that the state school lands are an endowment of land assets held in a perpetual, intergenerational public trust for the support of public schools, which should not be significantly diminished; that the disposition and use of such lands should therefore benefit public schools including local school districts; and that the economic productivity of all lands held in public trust is dependent on sound stewardship, including protecting and enhancing the beauty, natural values, open space, and wildlife habitat thereof, for this and future generations. In recognition of these principles, the state board of land commissioners shall be governed by the standards set forth in section 10 of article IX of the state constitution in the discharge of its fiduciary obligations, in addition to other laws generally applicable to trustees.

(b) The state board of land commissioners shall serve as the trustee for the lands granted to the state in public trust by the federal government, lands acquired in lieu thereof, and additional lands held by the board in public trust. The board shall have the duty to manage, control, encumber, and dispose of such lands in accordance with the purposes for which said grants of land were made and section 10 of article IX of the state constitution, and subject to such terms and conditions consistent therewith as may be prescribed by law.

(c) It shall be the duty of the state board of land commissioners to provide for the prudent management, location, protection, sale, exchange, or other disposition of all lands heretofore, or which may hereafter be, held by the board as trustee pursuant to subsection (6) of section 9 of article IX of the state constitution, in order to produce a reasonable and consistent income over time. The state board of land commissioners shall protect and enhance the long-term productivity and sound stewardship of the trust lands held by the board.

(d) The state board of land commissioners shall manage the development and utilization of natural resources on state lands in a manner which will conserve the long-term value of such resources, as well as existing and future uses, and in accordance with state and local laws and regulations.

Source: L. 77: Entire section added, p. 1619, § 1, effective May 26. L. 97: Entire section amended, p. 832, § 2, effective May 21.

Editor's note: Subsection (3)(c) provided for the repeal of subsections (3)(b) and (3)(c), effective June 30, 2002. (See L. 97, p. 832.)

36-1-102. Employees - director - bonds - report. (1) (a) The state board of land commissioners shall hire, pursuant to section 13 of article XII of the state constitution and with the consent of the governor, a director, and, through the director, shall employ an office force. The director shall, subject to the general policies of the state board of land commissioners, have administrative direction over the activities of the state board of land commissioners. The state board of land commissioners may contract for office space, acquire equipment and supplies, and enter into contracts as necessary to accomplish its duties.

(b) It is the duty of the director to keep the records of the state board of land commissioners; to make out and countersign all patents and leases issued by the board to purchasers and lessees of state lands, and keep a suitable record of the same; to file and preserve bonds of lessees and those given by purchasers to secure deferred payments; to make and deliver to purchasers a suitable certificate of purchase; to have the custody of the seal of the state board of land commissioners; to keep the minutes of the board; to receive all moneys collected on account of the state board of land commissioners, and to pay them over to the state treasurer, as prescribed by law; and to perform such other duties concerning the land affairs of the state as the said board may direct.

(2) (Deleted by amendment, L. 97, p. 835, § 3, effective May 21, 1997.)

(3) The board shall be provided with a suitable office and office furniture by the office of state planning and budgeting.

(4) The state board of land commissioners shall publish on or before November 1 of each year, subject to the approval and control of the executive director of the department of natural resources, a summary of the transactions of the state board of land commissioners, and the land affairs of the state, showing, by tables, the land belonging to the several funds of the state, to whom sold, the amount leased, and the receipts from all sources, and such summary shall contain any such other items or information concerning state lands as the state board of land commissioners or the executive director of the department of natural resources may deem worthy of publication. The state board of land commissioners shall deliver the summary of land transactions prepared pursuant to this subsection (4) as specified in subsection (8) of this section.

(5) Before assuming the duties of his office, each member of the state board of land commissioners shall give a surety bond, the expense of which shall be paid from the operating funds of the state board of land commissioners, in the sum of thirty thousand dollars, conditional upon the faithful discharge of his duties, which bond shall be approved by the governor and state treasurer and filed with the secretary of state.

(6) The board shall report annually to the executive director of the department of natural resources at such time and on such matters as the executive director may require. Publications of the board circulated in quantity outside the department shall be subject to the approval and control of the executive director.

(7) Repealed.

(8) The state board of land commissioners shall deliver a copy of the summary of land transactions required pursuant to subsection (4) of this section, the investment and development fund report required pursuant to section 36-1-153 (4), and the income and inventory report required pursuant to section 36-1-153.5 (1) on or before November 1, 2011, and on or before November 1 of each year thereafter, to the members of the house and senate education committees, or any successor committees, the members of the house agriculture, livestock, and natural resources committee and the senate agriculture and natural resources committee, or any successor committees, the members of the joint budget committee, the members of the state board of education, and the state treasurer. In addition, the state board of land commissioners shall make the summary of land transactions, the investment and development fund report, and the income and inventory report available to the public on the state board of land commissioners web site on or before November 1, 2011, and on or before November 1 of each year thereafter.

Source: L. 19: p. 638, § 2. C.L. § 1147. CSA: C. 134, § 45. CRS 53: § 112-3-2. C.R.S. 1963: § 112-3-2. L. 64: p. 164, § 120. L. 75: (3) amended, p. 821, § 16, effective July 18, 1975. L. 85: (7) added, p. 242, § 4, effective May 16, 1985. L. 96: (7) repealed,

p. 1222, § 20, effective August 7. **L. 97:** (1) and (2) amended, p. 835, § 3, effective May 21. **L. 2011:** (4) amended and (8) added, (SB 11-029), ch. 51, p. 132, § 1, effective August 10.

Cross references: (1) For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

(2) For the legislative declaration contained in the 1996 act repealing subsection (7), see section 1 of chapter 237, Session Laws of Colorado 1996.

36-1-103. Deputy register - duties - bond. (Repealed)

Source: **L. 19:** p. 639, § 3. **C.L.** § 1148. **CSA:** C. 134, § 47. **CRS 53:** § 112-3-3. **C.R.S. 1963:** § 112-3-3. **L. 97:** Entire section repealed, p. 835, § 4, effective May 21.

36-1-104. Deed - execution - copy of record. (1) The governor is authorized, and, in case of his absence or inability, the lieutenant governor is authorized, to execute a good and sufficient deed or patent of conveyance transferring any lands which may be ordered sold or which shall be sold and disposed of by the state board of land commissioners under the statutes of this state. Such deed or patent shall be attested by the secretary of state, countersigned by the director of the state board of land commissioners, and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be receivable in evidence in all courts of record in this state, the same as the original.

(2) Where such deed or patent may be issued pursuant to this section to a person who has died before the date of such deed or patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased grantee or patentee as if the deed or patent had issued to the deceased person during life.

Source: **L. 19:** p. 640, § 4. **C.L.** § 1149. **CSA:** C. 134, § 48. **L. 49:** p. 552, § 1. **CRS 53:** § 112-3-4. **C.R.S. 1963:** § 112-3-4. **L. 97:** (1) amended, p. 836, § 5, effective May 21.

36-1-105. Selection and location of lands. It is the duty of the state board of land commissioners to select and locate all lands which are on or after March 31, 1919, granted to this state by the general government, for any purpose whatever, and the board shall take the necessary steps to secure the approval of such selections by the proper officers of the general government. In making such selections, the board may employ such agents and means as may be necessary to acquaint the board with the character of the lands selected; and the board may provide to have the lands belonging to the state classified and appraised.

Source: **L. 19:** p. 640, § 5. **C.L.** § 1150. **CSA:** C. 134, § 49. **CRS 53:** § 112-3-5. **C.R.S. 1963:** § 112-3-5.

36-1-106. Appraisers' reports. (Repealed)

Source: **L. 17:** p. 506, § 3. **C.L.** § 1153. **CSA:** C. 134, § 52. **CRS 53:** § 112-3-6. **C.R.S. 1963:** § 112-3-6. **L. 97:** Entire section repealed, p. 836, § 6, effective May 21.

36-1-107. Resolution of selection. The state board of land commissioners from time to time shall make selection and location of the lands to which the state is entitled under the several grants of land from congress by including in its minutes a proper resolution, particularly designating all such pieces, parcels, or tracts of land so selected and located, and thereupon from time to time said board shall promptly take all necessary and proper steps to effectually secure the approval thereof by the proper officers of the general government.

Source: L. 17: p. 506, § 4. C.L. § 1154. CSA: C. 134, § 53. CRS 53: § 112-3-7. C.R.S. 1963: § 112-3-7.

36-1-107.5. Long-term stewardship trust - nomination. (1) In order to fulfill the mandate of section 10 (1) (b) (I) of article IX of the state constitution, the state board of land commissioners shall, through a statewide public nomination process, establish a long-term stewardship trust of up to three hundred thousand acres of land that the state board of land commissioners determines to be valuable primarily to preserve long-term benefits and returns to the state and to be held and managed to maximize options for continued stewardship, public use, or future disposition. In holding such lands in trust, the state board of land commissioners shall permit only those uses that will protect and enhance the beauty, natural values, open space, and wildlife habitat of those lands; except that any such restrictions on use need not necessarily preclude existing uses or management practices including but not limited to mineral resources, agricultural, and grazing uses.

(2) (a) The state board of land commissioners shall provide written notification of any lands under consideration to be selected for the long-term stewardship trust to any present lessees with interest in such lands and the board of county commissioners, if such lands are located within the unincorporated portion of a county, the municipal governing body, if such lands are located within an incorporated municipality, or both the board of county commissioners and the municipal governing body, if such lands are located within three miles of any incorporated municipality.

(b) In such notification, the state board of land commissioners shall request the local governing body or bodies to comment on whether existing uses and management practices are in compliance with valid local land use regulations and land use plans as required in section 10 (1) (c) of article IX of the state constitution. The state board of land commissioners shall further request in such notification that, within forty-five days after receipt of the notification, the local governing body or bodies provide comment to the state board of land commissioners on whether the selection is in accordance with the provisions of article IX of the state constitution.

(c) In the notification, the state board of land commissioners shall also request that the local governing body or bodies may also include in its assessment and response any other factors the local governing body or bodies determine are relevant for the consideration of lands for the long-term stewardship trust, including the criteria set forth in this section and in sections 9 and 10 of article IX of the state constitution.

(d) If the state board of land commissioners' staff recommendation is in conflict with the assessment of the governing body or bodies, the state board of land commissioners shall submit a written response, by certified mail, to the appropriate governing body or bodies at least fourteen days before making a final decision on a selection of lands on which the local governing body or bodies have provided written comment.

(3) The state board of land commissioners shall develop and implement a statewide public nominating process for lands to be included in the long-term stewardship trust established pursuant to subsections (1) and (2) of this section. Using this process, the state board of land commissioners shall designate at least two hundred thousand acres of land to be part of the long-term stewardship trust on or before January 1, 1999, and shall designate at least an additional ninety-five thousand acres on or before January 1, 2001.

(4) In selecting and locating lands for inclusion in the long-term stewardship trust, the state board of land commissioners shall make its determination based on criteria and requirements set forth in section 10 of article IX of the state constitution, including the provision specifying that the use of land in the long-term stewardship trust shall comply with valid local land use regulations and land use plans.

(5) The state board of land commissioners may remove specific parcels of land from the long-term stewardship trust only upon the affirmative vote of four members of the state board of land commissioners and upon the designation or exchange of an equal or greater amount of additional land into said trust.

(6) Prior to the inclusion of any land in the long-term stewardship trust, the state board of land commissioners shall consult existing published information concerning the agricultural and mineral resources potential of said land, including master plans developed

under section 34-1-304, C.R.S. If information as to agricultural and mineral resource potential is inadequate, the board shall obtain an inventory of the mineral resources potential of said land first from the Colorado geological survey, or, if the Colorado geological survey is unable to complete such inventory, from an entity of equivalent credibility. If such inventory is not completed within one year after the request by the state board of land commissioners or is not completed prior to the deadline set forth in section 10 of article IX of the state constitution, the inclusion of such land in the long-term stewardship trust may proceed.

Source: L. 97: Entire section added, p. 836, § 7, effective May 21. L. 98: (2) (c) amended, p. 828, § 49, effective August 5.

36-1-108. Appraisal - classification - plat. Immediately after the selection of said indemnity land is completed, the state board of land commissioners shall begin a general appraisal of all lands owned by the state. The board shall provide proper books for such purpose wherein shall be set forth the legal description, general character and adaptability, and appraised valuation of each of the several pieces, parcels, or tracts of lands so classified and appraised, together with such other useful information as the board shall deem necessary. The board also from time to time shall provide proper plats showing all such lands so classified and appraised.

Source: L. 17: p. 506, § 5. C.L. § 1155. CSA: C. 134, § 54. CRS 53: § 112-3-8. C.R.S. 1963: § 112-3-8.

36-1-109. Reclassification. The state board of land commissioners has the power from time to time to reclassify and reappraise any lands owned by the state and shall make the same record thereof as provided by this article for the original classification and appraisal of such lands and shall make the necessary notations or changes on its existing records.

Source: L. 17: p. 507, § 6. C.L. § 1156. CSA: C. 134, § 55. CRS 53: § 112-3-9. C.R.S. 1963: § 112-3-9.

36-1-110. Books and plats - public records. All books and plats required by this article to be provided and kept by the state board of land commissioners shall be a part of the public records of said board and shall be open to inspection.

Source: L. 17: p. 507, § 7. C.L. § 1157. CSA: C. 134, § 56. CRS 53: § 112-3-10. C.R.S. 1963: § 112-3-10.

36-1-111. Land appraisers. (Repealed)

Source: L. 19: p. 640, § 6. C.L. § 1158. CSA: C. 134, § 57. CRS 53: § 112-3-11. C.R.S. 1963: § 112-3-11. L. 97: Entire section repealed, p. 838, § 8, effective May 21.

36-1-112. Fees - disposition of fees. (1) The state board of land commissioners is authorized to collect fees for the issuance of leases, patents, certificates of purchase, right-of-way documents, and recording assignments, for the making of township plats, for the filing of bonds, and for the filing of all documents necessary to be filed in the office at amounts set by the board which shall cover all direct and indirect costs of the board in the administration of this article.

(2) All moneys collected by the state board of land commissioners for fees collected as specified in subsection (1) of this section shall be deposited by the director of the state board of land commissioners with the state treasurer for credit as provided in section 36-1-148.

Source: L. 19: p. 641, § 7. C.L. § 1159. CSA: C. 134, § 58. L. 45: p. 522, § 1. CRS 53: § 112-3-12. C.R.S. 1963: § 112-3-12. L. 65: p. 921, § 1. L. 71: pp. 1096,

1097, §§ 2, 3. **L. 77:** (1)(q) added, p. 1620, § 1, effective May 26. **L. 79:** Entire section amended, p. 1345, § 1, effective July 1. **L. 92:** Entire section amended, p. 1909, § 1, effective March 4. **L. 97:** (2) amended, p. 838, § 9, effective May 21.

ANNOTATION

Salaries or expenses of the board are to be paid only from the fees and commissions authorized by this section. In re Salaries of

Comm'rs & Employees of State Land Bd., 55 Colo. 105, 133 P. 140 (1913) (decided prior to earliest source of this section).

36-1-112.5. Fiscal impact study. Prior to the lease, sale, or exchange of any lands for commercial, residential, or industrial development, the state board of land commissioners shall determine that the income from the proposed lease, sale, or exchange can reasonably be anticipated to exceed the fiscal impact of such development on local school districts and state funding of education from increased school enrollment associated with such development. When determining the fiscal impact of the proposed lease, sale, or exchange of any land that is a part of any mining operation, the state board of land commissioners shall consider the fiscal and other benefits to the local school districts from the development of the entire operation.

Source: **L. 97:** Entire section added, p. 838, § 10, effective May 21.

36-1-113. Leases - rental - mineral resources lands. (1) The state board of land commissioners may lease any portion of the land of the state at a rental to be determined by it, except as provided in sections 36-1-118, 36-1-123.5, 36-1-147, and 36-1-147.5. The lessee shall pay the annual rental to the board, who shall receipt for the same in the lease. Upon receiving such annual rental, the board shall transmit the same to the state treasurer, as provided by law, and take his or her receipt therefor. If geothermal resources or mineral resources are found upon the state land, such land may be leased for the purpose of removing such resources for such length of time and conditioned upon the payment to the board of such royalty upon the product as the board may determine.

(2) All geothermal leases issued by the state board of land commissioners may be awarded as the result of negotiation or competitive bidding, but no such lease shall be executed until after at least thirty days' public notice that the award of a lease is contemplated.

(3) (a) (I) As used in this subsection (3), "logical mining area" means an area of land in which metallic and industrial minerals, construction materials, or coal resources can be developed in an efficient, economical, and orderly manner as an integrated operation with due regard to conservation of such resources. A logical mining area may consist of state lands including one or more state surface or mineral leases, or both such types of leases, and may include lands owned by other persons or entities.

(II) As used in this subsection (3), "oil and gas unit" means a federal exploratory unit pursuant to unit plan regulations under 43 CFR 3160, unit operations under section 34-60-118, C.R.S., or drilling and spacing units and pooling of interests under section 34-60-116, C.R.S. An oil and gas unit may consist of state lands including one or more state surface or mineral leases, or both such types of leases, and may include lands owned by other persons or entities.

(b) With respect to all surface and mineral lands, or both, included in whole or in part in a logical mining area for those operations permitted under article 32, 32.5, or 33 of title 34, C.R.S., as of July 1, 1997, or, in an oil and gas unit established under applicable federal or state law as of July 1, 1997, nothing in this article shall preclude the state board of land commissioners from issuing a new lease, renewing an existing lease, or issuing a lease extension consistent with article IX of the state constitution to facilitate the complete and orderly development and reclamation of such mining operations or of such oil and gas operations.

(c) (I) When the state board of land commissioners considers whether a lease for such land included in a logical mining area or in an oil and gas unit established under applicable

federal or state law as of July 1, 1997, should be issued, renewed, or extended to accomplish the orderly development and reclamation of a logical mining area or to conduct oil and gas operations, the state board of land commissioners shall specifically consider in making its findings:

(A) Whether the benefit to the trust, including the current or proposed income produced from the mining or oil and gas operation, is outweighed by current or proposed uses other than the mining or oil and gas operation; and

(B) Whether the mining or oil and gas operation is incompatible with current or proposed uses.

(II) Nothing in this section shall affect the obligation of any lessee from complying with any federal, state, or local law, rule, code, or regulation.

Source: L. 19: p. 642, § 8. C.L. § 1160. CSA: C. 134, § 59. CRS 53: § 112-3-13. C.R.S. 1963: § 112-3-13. L. 74: Entire section amended, p. 313, § 2, effective May 17. L. 75: Entire section amended, p. 222, § 75, effective July 16. L. 97: (1) amended and (3) added, p. 839, § 11, effective May 21. L. 2007: (1) amended, p. 620, § 1, effective August 3. L. 2009: (1) amended, (HB 09-1317), ch. 381, p. 2073, § 3, effective June 2.

ANNOTATION

The matter of the lease of coal lands is wholly within the discretion of the board with respect to the terms and conditions on which the lease may be granted. Colo. Fuel & Iron Co. v. Adams, 14 Colo. App. 84, 60 P. 367 (1899) (decided prior to earliest source of this section).

The general assembly may not limit commissioners' power to lease certain land. Where the land included within oil and gas leases are lands "granted to the state by the general government", they are lands over which the land commissioners have exclusive powers of disposal. Therefore, it does not lie within the power of the general assembly to place limitation or qualification upon the exercise of that

power. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1963).

The leasing powers of the board under this section are subject to the implied limitation that it cannot lease state land already properly in the physical possession of others under the mining laws. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Where mineral lode locations are made on state lands in compliance with the state laws relating to discovery, posting, notice, and other applicable provisions, such claims take priority over a subsequent mineral lease issued by a duly authorized state leasing agency. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

36-1-114. Adjustment of rentals. When, in its opinion, conditions justify, the state board of land commissioners has the power to adjust rentals under any existing, expired, or defaulted lease on state lands in a manner to comply with the requirements of sections 9 and 10 of article IX of the state constitution and may accept payments on delinquent rentals in accordance with such adjustments.

Source: L. 37: p. 939, § 1. CSA: C. 134, § 59(1). CRS 53: § 112-3-14. C.R.S. 1963: § 112-3-14. L. 97: Entire section amended, p. 840, § 12, effective May 21.

36-1-115. Development of oil, gas, or geothermal resource areas. The state board of land commissioners is authorized to join on behalf of the state in a cooperative or unit plan of development or operation for any oil, gas, or geothermal resource pool, field, or area, or for any part of any such pool, field, or area, with the United States government and its lessees or with others or with both such parties and, for that purpose, is authorized at or after the time of joining to modify and change any and all terms of the leases issued under the provisions of articles 1 to 7 of this title as mutually agreed by the lessor and lessee in any such lease, including the extension of the term of years otherwise applicable to any such lease for the full period of time such cooperative or unit plan may remain in effect, as required to conform with the terms of any such lease to such cooperative or unit plan and to facilitate the efficient and economic production of the oil, gas, or geothermal resource from the lands so affected. Any such cooperative or unit plan, including lands owned by the state, may, in the discretion of the state board of land commissioners, contain a provision

whereby authority is vested in the secretary of the interior if lands of the United States are also included or in any such person, committee, or state or federal officer or agency as may be designated in the plan to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan.

Source: L. 47: p. 692, § 1. CSA: C. 134, § 59(2). CRS 53: § 112-3-15. C.R.S. 1963: § 112-3-15. L. 74: Entire section amended, p. 314, § 3, effective May 17. L. 2007: Entire section amended, p. 2048, § 92, effective June 1.

Cross references: For leasing and development of school district lands for oil and gas, see § 22-32-112.

36-1-116. Disposition of rentals, royalties, and timber sale proceeds.
(1) (a) (I) Except for proceeds and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., and except as provided in subparagraph (II) of this paragraph (a), proceeds received by the state for the sale of timber on public school lands; rental payments for the use and occupation of the surface of said lands; and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands shall be credited to the public school income fund for distribution as provided by law.

(II) (A) Except as provided in sub-subparagraph (B) of this subparagraph (II), for the 2010-11 state fiscal year and each state fiscal year thereafter, the proceeds received by the state for the sale of timber on public school lands, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands other than proceeds, rentals, and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the permanent school fund and shall become part of the principal of the permanent school fund.

(B) For the 2012-13 state fiscal year, all proceeds received by the state for the sale of timber on public school lands, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands other than proceeds, rentals, and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be transferred to the state public school fund created in section 22-54-114, C.R.S.

(b) (I) Except for royalties and other payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., except as provided in subparagraph (II) of this paragraph (b), and except as provided in paragraph (c) of this subsection (1), royalties and other payments for the depletion or extraction of a natural resource on said lands shall be credited to the permanent school fund.

(II) (A) Repealed.

(B) For the 2009-10 state fiscal year, up to three million dollars of royalties and other payments for the depletion or extraction of a natural resource on said lands, other than royalties and other payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the state board of land commissioners investment and development fund created in section 36-1-153.

(C) For the 2010-11 state fiscal year, up to four million dollars of royalties and other payments for the depletion or extraction of a natural resource on said lands, other than royalties and other payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the state board of land commissioners investment and development fund created in section 36-1-153.

(D) For the 2011-12 state fiscal year and each state fiscal year thereafter, up to five million dollars of royalties and other payments for the depletion or extraction of a natural resource on said lands, other than royalties and other payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the state board of land commissioners investment and development fund created in section 36-1-153.

(E) Subject to the limits specified in sub-subparagraphs (B), (C), and (D) of this subparagraph (II), the state board of land commissioners shall determine the exact amount of royalties and other payments for the depletion or extraction of a natural resource on public school lands that is to be credited to the state board of land commissioners investment and development fund pursuant to this subparagraph (II).

(c) (I) For the 2011-12 state fiscal year, the first twenty-one million dollars of royalties and other payments for the depletion or extraction of a natural resource on public school lands in excess of the moneys credited to the state land board trust administration fund pursuant to section 36-1-145 (3), credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., and credited as specified in subparagraph (II) of paragraph (b) of this subsection (1) shall be transferred to the state public school fund created in section 22-54-114, C.R.S. Any amount of royalties and other payments for the depletion or extraction of a natural resource on public school lands in excess of the amounts described in this subparagraph (I) shall be credited to the permanent school fund and shall become part of the principal of the permanent school fund.

(II) For the 2012-13 state fiscal year, royalties and other payments for the depletion or extraction of a natural resource on public school lands not allocated to the state land board trust administration fund pursuant to section 36-1-145 (3), not credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., and not credited as specified in subparagraph (II) of paragraph (b) of this subsection (1) shall be transferred to the state public school fund created in section 22-54-114, C.R.S.

(2) (a) Proceeds received by the state for the sale of timber on lands belonging to any of the state trust funds other than on public school lands; rental payments for the use and occupation of the surface of said lands; and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands shall be credited to the proper trust income fund.

(b) Royalties and other payments for the depletion or extraction of a natural resource on said lands shall be credited to the proper permanent trust fund.

(3) This section is subject to the provisions of section 36-1-145.

Source: L. 17: p. 414, § 1. C.L. § 1161. CSA: C. 134, § 60. CRS 53: § 112-3-16. C.R.S. 1963: § 112-3-16. L. 71: p. 1095, § 1. L. 74: (1)(a) and (2)(a) amended, p. 314, § 4, effective May 17. L. 2000: (1) amended, p. 1869, § 97, effective August 2. L. 2005: (1) amended, p. 536, § 1, effective May 24. L. 2008: (1) amended, p. 1067, § 13, effective July 1. L. 2009: (1)(a)(II) and (1)(b)(I) amended and (1)(c) added, (SB 09-260), ch. 200, pp. 900, 901, §§ 2, 3, effective May 1; (1)(b)(II) amended, (SB 09-022), ch. 246, p. 1109, § 1, effective May 14; (1)(a)(II) amended, (SB 09-257), ch. 424, p. 2368, § 7, effective June 4. L. 2010: (1)(a)(II)(B) and (1)(c) amended, (SB 10-150), ch. 108, pp. 362, 363, §§ 2, 3, effective April 15; (1)(a)(II)(A) amended, (HB 10-1369), ch. 246, p. 1101, § 10, effective May 21. L. 2011: (1)(a)(II)(B) and (1)(c) amended, (SB 11-230), ch. 305, p. 1468, §§ 9, 10, effective June 9. L. 2012: (1)(a)(II)(B) and (1)(c) amended, (SB 12-145), ch. 202, p. 806, § 2, effective May 24.

Editor's note: (1) Amendments to subsection (1)(a)(II) by Senate Bill 09-260 and Senate Bill 09-257 were harmonized.

(2) Subsection (1)(b)(II)(A) provided for the repeal of subsection (1)(b)(II)(A), effective July 1, 2009. (See L. 2009, p. 1109.)

Cross references: (1) For the public school income fund, as credited to the state public school fund, see § 22-54-114; for the public school fund, see §§ 3 and 5 of art. IX, Colo. Const., and article 41 of title 22; for the permanent school fund, see § 14 of the Enabling Act of the Colo. Const.

(2) For the legislative declaration in the 2011 act amending subsections (1)(a)(II)(B) and (1)(c), see section 1 of chapter 305, Session Laws of Colorado 2011.

36-1-117. Leases, rentals payable in advance. All leases of state or school land shall be conditioned upon the payment of rent in advance, and the violation of this condition shall work a forfeiture of the lease, at the option of the state board of land commissioners, after thirty days' notice to the lessees. Notice shall be sent to the last-known post office address of the lessee, as given by the lessee to the director of the state board of land commissioners.

Source: L. 19: p. 642, § 9. C.L. § 1162. CSA: C. 134, § 61. CRS 53: § 112-3-17. C.R.S. 1963: § 112-3-17. L. 97: Entire section amended, p. 840, § 13, effective May 21.

36-1-118. Terms of leasing - renewals - sale of leased land. (1) (a) The public lands of the state may be leased by the state board of land commissioners in such manner and to such persons as will be consistent with article IX of the constitution of the state of Colorado. A lease of lands for grazing or agricultural purposes shall be for a period of ten years unless an alternate term is agreed to by the board and the lessee.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), in determining the renewal of any expiring lease, the board shall consider, among other things, the care and use given the land and the development work done by the lessee in conserving and promoting the productivity thereof and in promoting benefit for the trusts.

(II) In determining the renewal or termination of an expiring agricultural or grazing lease, or the sale or exchange of land for agricultural or grazing purposes, the board shall consider the benefit that continued agricultural and grazing use of the land contributes to the purposes of the respective trusts by the preservation of the stability of the local community, the revenue provided for trust purposes, and the lessee's stewardship of the land.

(c) Before land is leased to anyone other than the present lessee for agricultural or grazing uses, the present lessee shall be given ten days' notice to begin negotiations and ninety days to complete negotiations with the state board of land commissioners concerning a new lease. The board shall not lease land that is being leased for agricultural or grazing uses to anyone other than the present lessee for agricultural or grazing uses unless the board and lessee fail to agree on lease terms, the present lessee does not wish to renew his or her lease, or the present lessee has failed to comply with any provision of the lease. If the land will not continue to be leased for agricultural or grazing purposes, the board shall find that the benefit of continued agricultural and grazing use of the land is outweighed by the benefit that will be provided by the new use and that continued agricultural or grazing use is incompatible with other purposes for which the land is to be leased.

(d) For agricultural or grazing leases expiring on or after July 1, 1998, the board shall provide the lessee with written notice, one year prior to the expiration of such lease, of its intent not to renew the lease for agricultural or grazing uses.

(1.5) In entering into lease agreements for agricultural use of any land of the state, the state board of land commissioners shall include in such leases terms, incentives, and lease rates that will promote sound stewardship and land management practices, long-term agricultural productivity, and community stability.

(2) Prior to the quarter period beginning April 1, 1955, and prior to each quarter period thereafter, the board shall make a listing of all grazing and other agricultural leases which expire within the second succeeding quarter period thereafter, giving a description of the land leased, the name of the lessee, and the expiration date of the lease. At least five days prior to the beginning of each such quarter period, a copy of such listing shall be certified to and transmitted by the board to the county clerk and recorder of each county in which

any such land to be leased is situate and shall, by said county clerk and recorder, immediately upon receipt thereof, be posted in the courthouse in a conspicuous place to which the public has access and kept so posted until all leases listed thereon have expired. A copy of such quarterly listing shall also be posted at the times above provided in the main office of the state board of land commissioners, available for public inspection.

(3) (a) All applications to lease or to renew a lease shall be made in writing to the board, stipulating the rental the applicant is willing to pay, and under such other regulations, not in conflict with the law, as the board may prescribe.

(b) The board shall require from any applicant for a lease that he give evidence of his responsibility to carry out the terms of the lease. Any applicant, except the present lessee, shall deposit with his application a sum of money equal to the first annual rental offered in his application.

(c) The board shall also require that an applicant state under oath the total acreage of agricultural or grazing land, if any, owned and to be operated by him in connection with the land to be leased, and the intended use, during the term of the lease, of both such private land, if any, and public land, either as to agricultural products to be produced thereon or as to the carrying capacity of such lands in terms of the number of livestock such tracts are expected to reasonably support; and, if a renewal, a history, for such period of time as prescribed by the board, of the past use of both such private land, if any, and public land, as to agricultural products produced and the number of livestock grazed thereon.

(4) (a) The board may, in its discretion, offer for sale any land leased at any time during the term of the lease as though said lease had not been executed, or it may withdraw such land from sale during the full term of the lease; except that the board may not sell or exchange land subject to a lease for agricultural or grazing purposes during the term of the lease unless the board complies with the requirements of paragraph (d) of subsection (1) of this section and paragraph (b) of this subsection (4). The board shall subject the sale or exchange of land currently leased for agricultural or grazing purposes to the continuation of the terms of the current lease unless the lessee agrees otherwise, the board or third party buys out the lease at a price equal to the current year's lease rate for each year, or fraction thereof, remaining in the lease, or unless subjecting the sale or exchange of such land to the current lease terms would violate article IX of the constitution of the state of Colorado. In any event, the board may cancel or terminate the lease on land subject to the lease up to a total of eighty acres during the term of the lease without payment as long as such cancellation or termination is done in compliance with paragraph (d) of subsection (1) of this section.

(b) If the board determines that all or a portion of land being leased for agricultural or grazing purposes may be offered for sale or nonsimultaneous exchange, and if the agricultural or grazing lessee is in compliance with the provisions of the lease, and if the lessee is in attendance or represented on the day of sale or at the bid opening for nonsimultaneous exchange of the land, the lessee may exercise his or her rights pursuant to this paragraph (b) to match the highest bid received. The lessee shall have the right to offer matching bids until such time as the high bidder refuses to raise the bid or until the lessee decides not to match the bid, whichever first occurs. If the successful bidder fails to comply with the terms of the sale or nonsimultaneous exchange, the next-highest bidder shall be offered the land without further auction process.

(5) The board may cancel and terminate any lease at any time if it finds that a lessee has violated any of the provisions of the lease or made any false statement in the application therefor.

(6) The board shall as soon as practicable, and not more than thirty days after the close of every quarter period, post, in the main office of the board, a complete listing of leases executed during that quarter period, together with rental figures for the same.

(7) The board may cancel and terminate any lease or other use of state lands procured through fraud, deceit, or misrepresentation.

p. 749, § 1, effective February 20. **L. 97:** (1.5) added, p. 840, § 14, effective May 21; (1), (4), and (5) amended and (7) added, p. 1151, § 1, effective May 28.

ANNOTATION

Annotator's note. Cases relevant to the subject matter of this section which were decided prior to its earliest source have been included in the annotations to this section.

The general assembly has the constitutional authority to regulate the board's activities. *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

The board's activities may not contradict or exceed specific statutory limits. *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

Lease term providing for cancellation to obtain maximum revenues. The constitution mandates that, unless limited by express statutory regulations, the board shall enter into whatever leases it deems to be most beneficial to the state. It may therefore utilize any lease terms not prohibited by law, such as provision for cancellation to obtain maximum revenues. *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

The limitation in the second sentence of this section is a regulation fairly within the power of the general assembly to fix. It was not the intention of the general assembly in adopting the provisos to destroy or impair the force of this second sentence of the section. In re

Leasing of State Lands, 18 Colo. 359, 32 P. 986 (1893).

Time limitations do not apply to coal lands. The provisions of this section limiting the time that any lease of state lands shall run and regulating the methods of renewing such leases have no application to the leasing of coal lands. *Colo. Fuel & Iron Co. v. Adams*, 14 Colo. App. 84, 60 P. 367 (1889).

Forfeiture by lessee in default. A lessee of state lands who is in default in some particular under the terms of his lease will be held to have forfeited any preference which otherwise should be accorded him as a prior lessee. *Wilson v. Collins*, 114 Colo. 407, 165 P.2d 663 (1946).

Mandamus will lie to compel collection of sum in default. Where a lessee of state lands is in default for failure to pay over to the state moneys collected by him, as required by the lease, the board of land commissioners is obligated to use all proper means to collect the sum so in default, and a taxpayer is entitled to maintain a suit to compel the performance of such duty. *Wilson v. Collins*, 114 Colo. 407, 165 P.2d 663 (1946).

36-1-118.3. Immunity from civil liability. A lessee of public trust lands and the lessee's agents and employees are immune from civil liability for or on account of damages or injuries to any person resulting from the board's allowing access to the leased trust land by the public for recreational or wildlife purposes without the lessee's approval so long as the damages or injuries are not the result of lessee's or lessee's agents or employees willful or wanton conduct or gross negligence. Assent by the lessee to any plan approved by the board that allows access over which the lessee has no control does not constitute approval by the lessee.

Source: **L. 97:** Entire section added, p. 1153, § 2, effective May 28.

36-1-119. Purchase of improvements. (1) Should anyone lease, purchase, or receive through an exchange any of the lands belonging to the state upon which there are authorized improvements belonging to the lessee, the new owner or new lessee shall pay the former lessee for such authorized improvements. Before a lease shall issue or before title to the land is conveyed or exchanged, the new owner or new lessee shall file in the office of the state board of land commissioners a receipt showing that the value of the improvements, as agreed upon by the parties or established by the state board, has been paid to the owner thereof in full or shall make satisfactory proof that he or she has tendered to such owner the value of the improvements so agreed upon or established by the board.

(2) Should the state board terminate or cancel a lease of state lands upon which there are authorized improvements belonging to the lessee, the board shall pay the value of the authorized improvements established by the board to the lessee subject to available funding for such purpose and subject to the lessee having satisfied all outstanding obligations to the state in relation to the lease, or unless otherwise agreed to by the lessee, or unless the value of the authorized improvements is paid by a third party.

Source: **L. 19:** p. 643, § 11. **C.L.** § 1164. **CSA:** C. 134, § 63. **CRS 53:** § 112-3-19.

C.R.S. 1963: § 112-3-19. **L. 75:** Entire section amended, p. 222, § 76, effective July 16. **L. 97:** Entire section amended, p. 1153, § 3, effective May 28.

ANNOTATION

Duty to discover parties and improvements on land. This section makes it the duty of an applicant for a lease to exercise at least some diligence to discover whether another party is upon the land and, if so, what has been done by him in pursuance of his occupancy; and, if improvements have been made by him, the pay-

ment or tender to him of the price of the improvements is made a condition precedent to the granting of the lease. *Am. Sulphur & Mining Co. v. Brennan*, 20 Colo. App. 439, 79 P. 750 (1905) (decided prior to earliest source of this section).

36-1-120. Leases - lands in city limits. Lands within city boundaries may be leased for a term not exceeding fifty years.

Source: **L. 19:** p. 644, § 12. **C.L.** § 1165. **CSA:** C. 134, § 64. **CRS 53:** § 112-3-20. **C.R.S. 1963:** § 112-3-20. **L. 97:** Entire section amended, p. 841, § 15, effective May 21.

36-1-120.5. Land subject to development - leases. (1) The general assembly hereby finds and declares that some of the public lands under the direction, control, and disposition of the state board of land commissioners are within the path of impending development and therefore are of unique economic value to the state for the funding of public schools. The general assembly recognizes that the state board of land commissioners needs flexibility to manage such lands so as to comply with the requirements of sections 9 and 10 of article IX of the state constitution, to prevent undue speculation by others on public lands under the control of the state board of land commissioners, and to protect the public's interest in such lands.

(2) Any lease of public lands under the control of the state board of land commissioners when such land is subject to development shall be in accordance with the provisions of this section. For purposes of this section, "land subject to development" means land which, because of its location or other characteristics, is determined by the state board of land commissioners to be suitable for commercial, industrial, or residential uses.

(3) The lessee of lands subject to development shall meet all federal, state, and local land use regulations, and the terms of a lease shall encourage the lessee to obtain the maximum economic recovery from the development of such lands. Local land use and other applicable local regulations shall not be applied in a discriminatory manner to public lands under the control of the state board of land commissioners.

(4) Any local land use regulation or other local regulation to the contrary notwithstanding, the appropriation and development of water associated with public lands under the control of the state board of land commissioners shall be pursuant solely to applicable laws of the state and the federal government.

(5) In addition to any other payments made by the lessee to the state, the lessee shall pay to all affected governmental entities an amount equal to the amount which would be owed for property taxes if the real property involved were privately owned. This amount shall be based on what the valuation for assessment of the underlying land would be if it were privately owned. These payments in lieu of taxes shall be made at the same time and in the same manner as real property taxes. If a lease commences or ends at other than the beginning of the calendar year, the payment in lieu of taxes shall be prorated for the year involved. Nothing in this section shall affect the authority of government entities to levy and collect property taxes upon privately owned improvements located upon public lands under the control of the state board of land commissioners.

(6) Until the state board of land commissioners leases for development purposes state lands under its control, no land used for agricultural purposes, grazing, forestry, mining, oil and gas production or exploration, or other similar uses shall be considered land subject to development; except that nothing in this subsection (6) shall be construed to limit the

authority of the state board of land commissioners to impose conditions upon the lease of public lands under its direction and control, subject to all other requirements of law.

Source: L. 87: Entire section added, p. 1291, § 1, effective May 25. L. 97: (1) amended, p. 841, § 16, effective May 21.

36-1-121. Trespass - penalty - bond. (1) Any corporation, company, or person using or occupying any state or school lands without lease, and any corporation, company, or person who shall use or occupy state or school lands for more than thirty days after the cancellation or expiration of a lease, and any corporation, company, or person who constructs a reservoir, ditch, railroad, public highway, telegraph or telephone line, or in any manner occupies or enters upon lands belonging to the state, without first having secured the authority and permission of the state board of land commissioners to so occupy the land for such purpose, shall be regarded as trespassers and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and each day shall be considered a separate offense.

(2) In each case, where a bond has been furnished to the state board of land commissioners, the surety of the lessee shall be equally liable with the lessee, and, in addition to the foregoing penalty, the state shall be allowed to collect as rental for the use of such lands a sum equal to the appraised value thereof for rental purposes, as fixed by the state board of land commissioners. All suits under the provisions of this article shall be instituted under the direction of the attorney general, in the name of the people of the state of Colorado.

Source: L. 19: p. 644, § 13. C.L. § 1166. CSA: C. 134, § 65. CRS 53: § 112-3-21. C.R.S. 1963: § 112-3-21. L. 97: (2) amended, p. 841, § 17, effective May 21.

ANNOTATION

This section does not exempt the state board of land commissioners from compliance with those provisions of the law governing the rights of all other landlords to dispossess a tenant from the occupancy of real property. *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

Section strictly construed. Under this section a heavy penalty may be imposed for violation of its provisions, and the section being penal must be strictly construed. *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

The penalty imposed for the offense by this section cannot be made the measure of damages to be collected by the people in a civil action. *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

There is no language in this section authorizing or permitting the entry of a judgment for possession of land in an action based upon the section. *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

36-1-122. Platting and sale in lots and blocks. The state board of land commissioners may cause any portion of the state or school lands to be laid out in lots and blocks or other tracts by a recorded plat to be sold at public auction or exchanged.

Source: L. 19: p. 646, § 15. C.L. § 1168. CSA: C. 134, § 67. L. 49: p. 533, § 3. CRS 53: § 112-3-23. C.R.S. 1963: § 112-3-23. L. 97: Entire section amended, p. 842, § 18, effective May 21.

36-1-123. Purchase of necessary land by U.S. (Repealed)

Source: L. 19: p. 646, § 16. C.L. § 1169. CSA: C. 134, § 68. CRS 53: § 112-3-24. C.R.S. 1963: § 112-3-24. L. 97: Entire section repealed, p. 842, § 19, effective May 21.

36-1-123.5. Sale or lease of state lands for federal military real property expansion.

No state lands shall be sold or leased to the United States department of defense or any other unit of federal government if such sale or lease has the purpose or effect of expanding the Pinon Canyon maneuver site.

Source: L. 2009: Entire section added, (HB 09-1317), ch. 381, p. 2073, § 4, effective June 2.

36-1-124. Sale of state lands. (1) The state board of land commissioners may at any time direct the sale of any state lands, except as provided in this article, in such parcels as the board deems proper. Except as specified in section 36-1-124.3, all sales under this article, except those to the United States, shall be advertised in four consecutive issues of a weekly paper of the county in which the land is situated, if there is a weekly paper in the county, and, if not, then in a paper published in an adjoining county and in other papers as the board may direct.

(2) Except as specified in section 36-1-124.3, the advertisement shall state the time, place, and terms of sale and the minimum price fixed by the state board of land commissioners for each parcel, lot, block, or tract below which no bid shall be received. All patents and certificates of purchase issued before March 31, 1919, are validated. If any land is sold on which authorized improvements have been made by lessees, the improvements shall be appraised under the direction of the board. When lands on which such improvements have been made are sold, the purchasers, if other than the owner of the improvements, shall pay the appraised value of the improvements to the owner thereof, taking a receipt therefor, and such purchaser shall deposit such receipt with the board before such purchaser is entitled to a patent or certificate of purchase. All such receipts shall be filed and preserved in the office of the state board of land commissioners.

(3) After receipt of a notice authorized by section 24-33-107 (2) (a), C.R.S., identifying lands alleged to have a unique economic or environmental value to the public, the state board of land commissioners shall not proceed with the sale of any lands identified in such notice unless such notice is withdrawn pursuant to section 24-33-107 (2) (c), C.R.S., or unless and until authorized by resolution or act of the general assembly or for two years thereafter, whichever first occurs. Thereafter, all the requirements of this article as to manner and terms of sale of state lands shall be deemed to have been met with respect to any sale of state lands made to the department of natural resources pursuant to the provisions of section 24-33-107 and article 1 of title 38, C.R.S.

(4) After any lands are designated as being included as part of the long-term stewardship trust established in section 36-1-107.5, the state board of land commissioners shall not proceed with the sale or exchange of any lands so designated unless such lands are first removed from the trust pursuant to section 36-1-107.5.

Source: L. 19: p. 646, § 17. **C.L.** § 1170. **CSA:** C. 134, § 69. **L. 49:** p. 553, § 4. **CRS 53:** § 112-3-25. **C.R.S. 1963:** § 112-3-25. **L. 65:** p. 921, § 2. **L. 67:** p. 50, § 1. **L. 73:** p. 178, § 3. **L. 97:** (1) and (2) amended and (4) added, p. 842, § 20, effective May 21. **L. 2009:** (1) amended, (SB 09-022), ch. 246, p. 1110, § 2, effective May 14. **L. 2010:** (1) and (2) amended, (HB 10-1165), ch. 124, p. 411, § 1, effective April 15.

Cross references: For additional provisions concerning the sale of state lands, see article 5 of this title.

ANNOTATION

- I. General Consideration.
- II. Advertisement of Sale.

I. GENERAL CONSIDERATION.

Annotator's note. Cases relevant to the subject matter of this section which were decided prior to its earliest source have been included in the annotations to this section.

Personal presence of board is not required at sale. The correct construction of the powers and duties of the board does not require the personal presence of the board at a sale of public land. *Routt v. Greenwood Cem. Land Co.*, 18 Colo. 132, 31 P. 858 (1902).

Under earlier law, payment by purchaser for improvements was not a condition precedent to completion of sale. An appraisal of the improvements of a lessee upon school land and a deposit of a receipt of the lessee showing payment by the purchaser of the value of the improvements was not a condition precedent to the power of the land board to complete the sale. Such provisions were for the benefit of the lessee, and did not constitute limitations upon the power of the board. *People v. Tynon*, 2 Colo. App. 131, 29 P. 809 (1892).

Transfer of property from state board of land commissioners to other public entity in exchange for land of equivalent value is not a "sale" of property under this section. *Sorenson v. Reg'l Transp. Dist.*, 745 P.2d 1047 (Colo. App. 1987).

II. ADVERTISEMENT OF SALE.

Register, under direction of board, may advertise and sell lands. When the board has properly exercised its jurisdiction and done the substantial things that insure a sale for at least a price that, in its judgment, is fair and adequate, then the advertising and making the sale in strict conformity with the regulations prescribed by the general assembly may be done by the register; and the board, by directing him to perform these duties, in no measure surrenders or delegates its trust functions. *Routt v. Greenwood Cem. Land Co.*, 18 Colo. 132, 31 P. 858 (1902).

Where attempted nonsimultaneous exchange of land specified a fixed value for the state property, did not specify a time period for transfer of the private property, and the board issued a patent when the private property had not yet even been identified, the transfer amounted to a sale in violation of both the constitution and the implementing statutes. *E. Lake Creek Ranch, LLP v. Brotman*, 998 P.2d 46 (Colo. App. 1999), rev'd on other grounds, 31 P.3d 886 (Colo. 2001).

The publication of the notice required by this section is an essential and mandatory requirement. *Briggs v. People*, 21 Colo. App. 85, 121 P. 127 (1912).

The publication of a notice is not sufficient where omitted from numerous copies of the newspaper. A notice of the sale of public lands which is omitted from numerous copies of the newspaper in which publication was directed and begun is not a compliance with this section, and a sale made upon such publication to one who at the time had notice of the defect must be vacated. *Briggs v. People*, 21 Colo. App. 85, 121 P. 127 (1912).

The board is not required to designate newspaper for advertising. While it might be the better practice for the board to designate the particular weekly newspaper in which the notice of sale should be published, and to designate other papers as in its discretion it may, there is no statutory provision requiring this to be done. *Routt v. Greenwood Cem. Land Co.*, 18 Colo. 132, 31 P. 858 (1892).

The state is not under duty to make compensation for improvement of public lands, sold without the statutory notice to one who purchased with notice of the defect. *Briggs v. People*, 21 Colo. App. 85, 121 P. 127 (1912).

Taxpayer has no standing to challenge the management decisions of the state board of land commissioners with regard to school lands. Such decisions have no effect on taxpayers, because the management of school lands has no effect on the state's funding of schools through the taxing power. *Brotman v. E. Lake Creek Ranch, LLP*, 31 P.3d 886 (Colo. 2001).

36-1-124.3. Acquisition of state trust lands by governmental entities - repeal.

(1) The general assembly declares that its intent in enacting this section is to authorize the transfer of interests in land to local governments or special districts in exchange for fair and adequate consideration.

(2) If the state board of land commissioners seeks to dispose of a parcel of land to a local government or special district, the board shall give public notice of its intent pursuant to subsection (3) of this section. Not less than sixty days after the date of notice, the board shall meet in public session to hear and receive testimony and evidence concerning the proposed disposal. After giving full consideration to the testimony as well as its legal mandates, the board shall vote whether to approve the transaction.

(3) For purposes of property disposals under this section, notice shall be published in

four consecutive issues of a weekly paper of the county in which such land is situated, in such other papers as the state board of land commissioners may direct, and on the board's public web site. The board shall directly notify, by e-mail if available, all lessees of the property and all governmental entities within whose boundaries the proposed transaction will take place. The notice shall identify the parcel, the local government or special district to receive the property interest, the purpose and benefit of the disposal, and the time and location of the public hearing.

(4) The state board of land commissioners shall not complete more than two transactions pursuant to this section in a fiscal year. All disposals pursuant to this section shall:

(a) Be based on fair market value as determined by the board that is consistent with an independent appraisal conforming to the uniform standards of professional appraisal practice standards; and

(b) Identify the purpose of the disposal of property as:

(I) Adding value to adjoining or nearby state trust property;

(II) Complying with valid local land use regulations as required by section 10 of article IX of the state constitution; or

(III) Benefitting board operations.

(5) This section is repealed, effective July 1, 2015.

Source: L. 2010: Entire section added, (HB 10-1165), ch. 124, p. 412, § 2, effective April 15.

36-1-124.5. Nonsimultaneous exchanges of state trust lands - fund. (1) The state board of land commissioners shall have the authority to undertake nonsimultaneous exchanges of land. For the purposes of section 22-41-101 (2), C.R.S., proceeds of land sold or otherwise disposed as part of a nonsimultaneous transfer pursuant to this section are not part of the designated trust fund until the nonsimultaneous transfer is completed pursuant to subsection (4) of this section.

(2) All revenues derived from the sale or other disposition of state trust land that is designated by the state board of land commissioners as being part of a nonsimultaneous exchange shall be transmitted by the director of the state board of land commissioners to the state treasurer who shall credit the same to a separate account in the nonsimultaneous state trust land exchange cash fund, which fund is hereby created. All interest derived from the deposit and investment of moneys in the fund shall be credited to the appropriate account in the fund. Moneys held in the fund shall not be used for the operating expenses of the board or for expenses incident to the disposition or acquisition of lands. Moneys in the fund are hereby continuously appropriated to the state board of land commissioners for the purposes of this section.

(3) Land that is designated by the state board of land commissioners to be purchased at the completion or partial completion of a designated nonsimultaneous exchange shall be paid for by moneys in the appropriate account in the fund.

(4) Upon a determination by the state board of land commissioners that a nonsimultaneous exchange is completed, but in any event no later than two years after the sale or other disposition of land designated as part of a nonsimultaneous exchange, any moneys remaining in a designated account in the fund shall be credited by the state treasurer to the trust fund maintained by the state treasurer for the proceeds of the trust lands disposed of or sold.

Source: L. 97: Entire section added, p. 843, § 21, effective May 21.

ANNOTATION

Where attempted nonsimultaneous exchange of land specified a fixed value for the state property, did not specify a time period for transfer of the private property, and the

board issued a patent when the private property had not yet even been identified, the transfer amounted to a sale in violation of both the constitution and the implementing statutes.

E. Lake Creek Ranch, LLP v. Brotman, 998 P.2d 46 (Colo. App. 1999), rev'd on other grounds, 31 P.3d 886 (Colo. 2001).

36-1-125. Reservations of rights on sale. (1) All sales of state lands shall be held at the state capitol unless otherwise directed by the state board of land commissioners. The state board of land commissioners shall reserve to the state all rights to all minerals, ores, and metals of any kind and character, and all coal, asphaltum, oil, gas, or other like substances in or under such land, and all geothermal resources and the right of ingress and egress for the purpose of mining, together with enough of the surface of the same as may be necessary for the proper and convenient working of such minerals and substances.

(2) All patents and certificates of purchase on state or school lands issued before March 31, 1919, and in which a reservation of rights to minerals, ores, and metals of any kind or character whatsoever, or coal, asphaltum, oil, gas, and other like substances, or geothermal resources has been made are validated. The holders of such certificates of purchase or the owners of said lands so patented shall by contract, deed, or other agreement acknowledge or reconvey to the state the minerals and substances so reserved, and the state board of land commissioners is authorized to accept on behalf of the state such deeds and conveyances and to make such agreements as may be necessary to carry out the provisions of this article.

(3) All patents and certificates of purchase issued before March 31, 1919, describing the lands with reference to legal subdivisions shown by the United States official survey, or by lots, blocks, or tracts shown on a recorded plat, or by metes and bounds descriptions, are validated.

Source: L. 19: p. 647, § 18. C.L. § 1171. CSA: C. 134, § 70. L. 49: p. 554, § 5. CRS 53: § 112-3-26. C.R.S. 1963: § 112-3-26. L. 74: (1) amended, p. 314, § 5, effective May 17. L. 77: (1) amended, p. 1622, § 1, effective May 27. L. 97: Entire section amended, p. 844, § 22, effective May 21.

Cross references: For additional provisions concerning the sale of state lands, see article 5 of this title.

ANNOTATION

I. General Consideration.

II. Reservation of Mineral Rights.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Interest of Landowner and Lessee in Oil and Gas in Colorado", see 25 Rocky Mt. L. Rev. 117 (1953). For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L.J. 1 (1974).

Annotator's note. Cases relevant to the subject matter of this section which were decided prior to its earliest source have been included in the annotations to this section.

This section is constitutional. This section applies to sales wherein mineral rights were reserved to the state, is without constitutional objection, and is valid. *Miller v. Limon Nat'l Bank*, 88 Colo. 373, 296 P. 796 (1931).

This section applies to reservations of "rights to minerals", and has no application to reservations affecting the right of the purchaser

to exercise exclusive control over the land. *Cronk v. Shoup*, 70 Colo. 71, 197 P. 756 (1921).

Transfer of property from state board of land commissioners to other public entity in exchange for land of equivalent value is not a "sale" of property under this section. *Sorenson v. Reg'l Transp. Dist.*, 745 P.2d 1047 (Colo. App. 1987).

The first proviso of this section is meaningless and ineffective. *Miller v. Limon Nat'l Bank*, 88 Colo. 373, 296 P. 796 (1931); *Driscoll v. State*, 88 Colo. 390, 297 P. 989 (1931).

Proof of decision as to place of sale need not be shown by the record. If it is necessary as a condition precedent that the board should determine that it was within its discretion to hold the sale in a place other than the state capital, the proof of that fact is not required to be shown by the record. *People v. G. H. Hard Land Co.*, 51 Colo. 260, 117 P. 141 (1911).

Where public land has been regularly sold by the state land board, the purchaser is entitled to a patent therefor executed by the

proper officials; mandamus is an appropriate remedy in case of a refusal to execute and deliver the patent. *Greenwood Cem. Co. v. Routt*, 17 Colo. 156, 28 P. 1125 (1892).

II. RESERVATION OF MINERAL RIGHTS.

Former sales of surface rights are now valid. A sale of surface rights in state lands in 1913, subsequently validated by statute, is as valid and binding as if duly authorized by statute when made. *Driscoll v. State*, 88 Colo. 390, 297 P. 989 (1931).

Formerly there was no authority to reserve minerals. Under a former statute, where the state land board offered for public sale only the surface of certain lands, reserving the mineral, and this reservation was without authority of law, the application of the purchaser for mandamus to compel the conveyance both of the surface, and all below the surface, was denied, upon the ground that the state land board was without authority to sell the mere surface and, therefore, the whole transaction was void. *Gunter v. Walpole*, 65 Colo. 234, 176 P. 290 (1918).

Title had to be conveyed in fee simple. Under the former statute (R.S. 1908, § 5185) which contained a provision that such patent should convey a good and sufficient title in fee simple, it was held that the board must convey the land in fee, and that there was nothing in the statute either directly or indirectly authorizing the board to encumber lands sold with any easement, exception, or reservation. *Walpole v. State Bd. of Land Comm'rs*, 62 Colo. 554, 163 P. 848 (1917).

36-1-126. Delinquent payments. When any purchaser of land defaults for a period of thirty days in any of the payments of either principal or interest due upon the certificate of purchase issued to him, the certificate may be forfeited and the lands reverted to the state upon a notice to that effect mailed to the last-known post-office address of the purchaser, which notice shall allow him thirty days additional in which to pay the indebtedness to the state.

Source: L. 19: p. 648, § 19. C.L. § 1172. CSA: C. 134, § 71. CRS 53: § 112-3-27. C.R.S. 1963: § 112-3-27.

36-1-127. Forfeiture - new sale. If any purchaser of state land, after receiving a certificate of purchase, fails to make any one of the payments stipulated therein, and the same remains unpaid for thirty days after the time when it should have been paid, as specified in the certificate, the state board of land commissioners, after issuing notice of forfeiture and allowing thirty days additional to pay the indebtedness as provided in section 36-1-126, may sell the land again. In the case of a sale, all previous payments made on account of such land shall be forfeited to the state. The land shall revert to the state and the title thereof shall be in the state as if no sale had ever been made.

Source: L. 19: p. 649, § 20. C.L. § 1173. CSA: C. 134, § 72. CRS 53: § 112-3-28. C.R.S. 1963: § 112-3-28. L. 97: Entire section amended, p. 845, § 23, effective May 21.

A right to receive a royalty for coal mined on the land sold may be reserved without destroying the fee, but a certificate of sale containing a provision that "No assignment of the said coal right shall be valid without the consent and approval of the board" conveys title less than the fee and was one the board had no power to grant under the former statute. *Cronk v. Shoup*, 70 Colo. 71, 197 P. 756 (1921).

Prior to this section, a purchaser of state lands received nothing by a certificate reserving mineral rights in the state. If the validating act granted him any right, it was one he could waive, and when he continued to make payments on certificates of sale of surface rights after the passage of the validating act, and thereafter defaulted in his payments, his contract was subject to cancellation, his payments to forfeiture, and his rights, if any, were waived. *Miller v. Limon Nat'l Bank*, 88 Colo. 373, 296 P. 796 (1931).

There is no merit to a bill to have reservation adjudged void. Where, prior to this section, a purchaser of state lands bid for only the surface rights, held the certificate of purchase with a clause in it reserving mineral rights, and continued to make payments on such purchase over a period of 13 years, there is no merit in a bill seeking to have the reservation adjudged void and to compel the issuance of a patent without conveyance by the purchaser to the state of the mineral rights so reserved. *Driscoll v. State Bd. of Land Comm'rs*, 23 F.2d 63 (8th Cir. 1927).

Under earlier law, inclusion in certificate of purchase of reservation to state of mineral rights was a mistake of law, not of fact, and did not invalidate the sale nor entitle the purchaser to recover the purchase price. *Bowles v. Miller*, 96 Colo. 145, 40 P.2d 243 (1935).

ANNOTATION

This section and § 36-1-128 are written into state land contracts, and a purchaser who takes no action indicating the withdrawal of his assent to a sales contract reserving mineral

rights to the state until long after it is validated is bound by the contract. *Miller v. Limon Nat'l Bank*, 88 Colo. 373, 296 P. 796 (1931).

36-1-128. Place of payment - venue. All moneys due and payable to the state board of land commissioners shall be paid at the office of the state board of land commissioners in the city and county of Denver, Colorado, and all actions for the recovery of same, or for the cancellation of certificates of purchase, or for the cancellation of leases, or for the recovery of the possession of the land, actions of forcible entry and detainer, or ejectment shall be brought in any court of competent jurisdiction in the city and county of Denver in the state of Colorado.

Source: L. 19: p. 649, § 21. C.L. § 1174. **CSA:** C. 134, § 73. **CRS 53:** § 112-3-29. **C.R.S. 1963:** § 112-3-29. **L. 97:** Entire section amended, p. 845, § 24, effective May 21.

ANNOTATION

Judgment for possession of state lands improper when brought under this section and § 36-1-121 alleging trespass on the same. *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

This section does not conflict with the Colorado rules of civil procedure requiring all actions affecting property to be tried in the county in which the subject of the action or a substantial part thereof is situated. *Dallas v. Fitzsimmons*, 137 Colo. 196, 323 P.2d 274 (1958).

Although this section expressly provides for ejectments, this can refer only to ejectment actions brought by the board and obvi-

ously is for the convenience of the state so that its officers and employees will not have to disrupt state business and spend time attending trials away from the seat of government. *Dallas v. Fitzsimmons*, 137 Colo. 196, 323 P.2d 274 (1958).

This section has no application to an action in ejectment by a lessee of the state against third parties. *Dallas v. Fitzsimmons*, 137 Colo. 196, 323 P.2d 274 (1958).

This section was inapplicable in an action brought against state board of land commissioners. *Bd. of Land Comm'rs v. District Court*, 191 Colo. 185, 551 P.2d 700 (1976).

36-1-129. Bonds. (1) When, in the judgment of the state board of land commissioners, a bond, a damage deposit, or earnest moneys by the purchaser of state lands is necessary, the board shall require the purchaser to give the financial warranty upon such conditions as the board may determine.

(2) (a) In leasing state lands for nonagricultural purposes, the state board of land commissioners shall require of the lessee a bond or damage deposit securing the state against loss of rents or other loss or waste, or occupation of the land for more than thirty days after the cancellation or expiration of the lease of the lessee, unless the lessee becomes the purchaser of the land, and in no case shall the lessee be allowed to cut or use more timber than is necessary for the improvement of the land or for fuel for the use of the family of the lessee; and the cutting and hauling of timber to sawmills, to be sawed on shares, is expressly prohibited.

(b) A lessee of state lands shall not be required to post a bond if such lessee is leasing state lands solely for agricultural purposes; except that a bond or damage deposit may be required for state-owned improvements even if leased solely for agricultural purposes.

(3) All bonds, damage deposits, and earnest moneys collected pursuant to this article that the state board of land commissioners has deemed forfeited or required for remediation activities shall be credited to the financial warranty account of the state land board trust administration fund created in section 36-1-145 (2) (e). Moneys in the account are continuously appropriated for the remediation or other activities on the affected property.

Source: L. 19: p. 649, § 22. C.L. § 1175. CSA: C. 134, § 74. CRS 53: § 112-3-30. C.R.S. 1963: § 112-3-30. L. 94: Entire section amended, p. 1682, § 1, effective May 31. L. 2010: Entire section amended, (HB 10-1165), ch. 124, p. 412, § 3, effective April 15.

ANNOTATION

Annotator's note. A case relevant to the subject matter of this section which was decided prior to its earliest source has been included in the annotations to this section.

The bond is to protect the state against damages resulting from retention of the premises by the purchaser after failure to make payments and the commission of such waste upon the land as to destroy or impair its value. *People v. Clough*, 16 Colo. App. 120, 63 P. 1066 (1901).

Certificate of purchase may be made a part of bond. A condition in a bond given by the purchaser of state land whereby he obligates himself to comply with all the terms of the

certificate of purchase makes such certificate, with its terms and conditions, a part of the bond. *People v. Clough*, 16 Colo. App. 120, 63 P. 1066 (1901).

Where bond is in the alternative to either pay or vacate, plaintiff in an action on the bond to recover the purchase price must prove failure to perform both conditions. *People v. Clough*, 16 Colo. App. 120, 63 P. 1066 (1901).

Where purchaser has option to pay or vacate, the latter requires only a surrender of actual possession. *People v. Clough*, 16 Colo. App. 120, 63 P. 1066 (1901).

36-1-130. Lost certificate of purchase. (Repealed)

Source: L. 19: p. 650, § 23. C.L. § 1176. CSA: C. 134, § 75. CRS 53: § 112-3-31. C.R.S. 1963: § 112-3-31. L. 97: Entire section repealed, p. 845, § 25, effective May 21.

36-1-131. State land board hearings - rules. (1) The state board of land commissioners may hear and determine the claims of all persons who claim a legal interest in the land or trust administered by the state board of land commissioners and who are aggrieved by an action of the board. The state board of land commissioners may appoint one or more of its members, the director, a hearing officer, or other appointee to render an initial decision on any matter before the board. Such decision may be appealed to the board. Any hearing or appeal shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(2) The board may promulgate such rules as in its opinion may be proper to accomplish any of its duties and powers.

Source: L. 19: p. 650, § 24. C.L. § 1177. CSA: C. 134, § 76. CRS 53: § 112-3-32. C.R.S. 1963: § 112-3-32. L. 97: Entire section amended, p. 845, § 26, effective May 21.

ANNOTATION

Applied in *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976); *Utah Int'l, Inc. v. Bd. of*

Land Comm'rs, 41 Colo. App. 72, 579 P.2d 96 (1978).

36-1-132. Lands sold subject to taxation. All lands sold under the provisions of this article or any interest therein shall be subject to taxation, and the director of the state board of land commissioners shall furnish to the county assessor of each county on May 1 of each year a list of the equities owned or acquired in all lands so sold, to whom sold, the price per acre, and the amount paid. Each county shall pay the expense incurred in compiling such list.

Source: L. 19: p. 650, § 25. C.L. § 1178. CSA: C. 134, § 77. CRS 53: § 112-3-33. C.R.S. 1963: § 112-3-33. L. 97: Entire section amended, p. 846, § 27, effective May 21.

ANNOTATION

For former statutory provision exempting such lands from taxation while title remained vested in the state, see Colo. Farm & Live

Stock Co. v. Beerbohm, 43 Colo. 464, 96 P. 443 (1908); Galé v. Beerbohm, 43 Colo. 521, 96 P. 449 (1908).

36-1-133. Rebate of taxes on reverted land. In case any lands sold under the provisions of this article are reverted to the state for any cause whatsoever, the director of the state board of land commissioners shall at once notify the county treasurer of the county in which the land is situated, and upon receipt of such notice it is the duty of the county treasurer to at once rebate all taxes that have been charged against the lands so reverted.

Source: L. 19: p. 650, § 26. C.L. § 1179. CSA: C. 134, § 78. CRS 53: § 112-3-34. C.R.S. 1963: § 112-3-34. L. 97: Entire section amended, p. 846, § 28, effective May 21.

ANNOTATION

The notice prerequisites were intended to prevent the payment of taxes upon land by successors and assigns, mediate or immediate, of the grantee, who had acquired fee simple title to the parcel, and to notify the grantee

itself in order to forestall conveyance by the grantee to others. State v. Franc, 165 Colo. 69, 437 P.2d 48, cert. denied, 392 U.S. 928, 88 S. Ct. 2284, 20 L. Ed. 2d 1385 (1968).

36-1-134. Proceeds of sale - funds. The funds arising from the sale of public school, university, and agricultural college lands shall be held intact for the benefit of the funds for which such lands were granted and shall be known as permanent funds, and the interest and rentals only shall be expended for the purpose of the grant. The funds arising from the sale, leasing, and income of all other state lands shall be disposed of as provided by law but, in the absence of any other provisions, may be invested in the same manner as the school fund.

Source: L. 19: p. 650, § 27. C.L. § 1180. CSA: C. 134, § 79. CRS 53: § 112-3-35. C.R.S. 1963: § 112-3-35.

ANNOTATION

Applied in In re Salaries of Comm'rs & Employees of State Land Bd., 55 Colo. 105, 133 P. 140 (1913).

36-1-135. Proceeds of leases - disposition. All moneys arising from the leasing of agricultural college, university, or public school lands which, on or after March 31, 1919, are received by the state treasurer shall be treated in all respects in the same manner as is provided by law for the disposition of the interest on the proceeds arising from the sale of the same class of lands.

Source: L. 19: p. 651, § 28. C.L. § 1181. CSA: C. 134, § 80. CRS 53: § 112-3-36. C.R.S. 1963: § 112-3-36.

ANNOTATION

Applied in In re Salaries of Comm'rs & Employees of State Land Bd., 55 Colo. 105, 133 P. 140 (1913).

36-1-136. Rights-of-way granted - reversion. The state board of land commissioners may grant rights-of-way across or upon any portion of state land for any ditch, reservoir,

railroad, communication system, electric power line, pipeline, or other installation necessary for the operation of said services or utilities and may grant rights-of-way on any tracts of state land to any person, public agency or instrumentality of the United States, or to this state, or to any of the institutions, agencies, counties, municipalities, districts, or other political subdivisions of this state for the purpose of building schoolhouses or public roads or highways or for any lawful use or purpose. Any right-of-way so granted shall be on such terms as the board shall determine and shall be subject to the filing fee specified in section 36-1-112. Said board may execute and sign, as provided by this article, on behalf of this state, an instrument in writing for such right-of-way or grant. This section shall not be construed to grant authority to said board to convey title to any such land by a grant of right-of-way. Whenever rights-of-way granted for any purposes mentioned in this section cease to be used for such purposes, the rights-of-way shall terminate, and all rights shall revert to this state or its successors in interest.

Source: L. 19: p. 651, § 29. C.L. § 1182. CSA: C. 134, § 81. L. 47: p. 690, § 1. CRS 53: § 112-3-37. C.R.S. 1963: § 112-3-37. L. 69: p. 924, § 1. L. 73: p. 1140, § 1. L. 77: Entire section amended, p. 1620, § 2, effective May 26. L. 97: Entire section amended, p. 846, § 29, effective May 21. L. 98: Entire section amended, p. 828, § 50, effective August 5.

ANNOTATION

Adverse possession established. Where the right-of-way deed contains language which creates a possibility of reverter, upon termination of the use, the estate of the grantees and those claiming through them would ordinarily be terminated. However, the right of the land board to reacquire the property is subject to statutory conditions which must be complied with by the state. Thus, where plaintiffs establish prima facie color of title by successive grants which are free of condition, are in possession adverse to the state for over 20 years, and are in possession and pay taxes under color of title for over 7

years, they are entitled to a decree against the state. *State v. Franc*, 165 Colo. 69, 437 P.2d 48, cert. denied, 392 U.S. 928, 88 S. Ct. 2284, 20 L. Ed. 2d 1385 (1968) (decided under law in effect prior to the repeal and reenactment of this section in 1969).

Patents granting easement held to create exception to granting of fee title to certain area of land; patent reserved to the state the underlying fee interest, and upon abandonment of easement, land reverted to the state. *Lincoln Sav. & Loan Ass'n v. State*, 768 P.2d 733 (Colo. App. 1988).

36-1-137. Sale of lands to procure irrigation.

(1) and (2) Repealed.

(3) If any person, other than the person making application for the purchase of the lands, is the highest bidder at the public sale thereof, such bidder shall, within such reasonable time as the board may fix, enter into a contract and bond, as required by the provisions of this article, for the construction of the ditch and for the furnishing of water therefrom; and, in the event of his failure to furnish a satisfactory bond and enter into the said contract within the time fixed, then such bid shall be disregarded, and such public sale shall be void and of no effect. The board shall make the sale upon like conditions as other state lands are sold, and shall require a good and sufficient bond from the party desiring to construct such ditch, conditioned upon the faithful performance of the contract, and the conditions of the sale, and in no case shall the title to any of said lands pass from the state until the ditch has been completed and accepted by the board.

Source: L. 19: p. 651, § 30. C.L. § 1183. CSA: C. 134, § 82. CRS 53: § 112-3-38. C.R.S. 1963: § 112-3-38. L. 97: (1) and (2) repealed, p. 846, § 30, effective May 21.

36-1-138. Mineral section - personnel - duties. (1) (a) The state board of land commissioners is authorized to establish, under the jurisdiction of the director of the state board of land commissioners, a mineral section and appoint a minerals director with experience in mineral resources production, management, development, or reclamation. It

is the duty of the minerals director or such director's designee or contractor to inspect all works operated under leases from the state for the production of mineral resources upon which rentals are due to the state upon a basis of a royalty upon the production therefrom, as often from time to time as the minerals director shall deem it necessary for the purpose of estimating and checking royalties therefrom, and keep such maps or other information of the workings of all such operations as will give the minerals section full information concerning the same.

(b) In the event the minerals director utilizes a contractor to conduct such investigation, the compensation to such contractor shall not be based on the number or amount of audit findings referred to the director for action.

(2) Lessees of all mineral resources lands shall be required to furnish the minerals director with copies or blueprints of all maps of underground surveys of leased land, made or authorized by such lessee, including engineer's field notes, certified to by the engineer who made the survey. The minerals director or such director's designee or contractor shall review activities related to mineral resources leases. The minerals director shall also check the royalties reported as due under such lease for the preceding month and compare the same with the surveys and other inspections made by the minerals director and shall report the result of such examination and checking to the director of the state board of land commissioners. Every mine and oil and gas operation and other works upon the lands managed by the state board of land commissioners held under lease therefrom by any person, association, partnership, or corporation shall be at all times subject to the inspection of the minerals director or such director's designee or contractor. The minerals director or the director's designee or contractor shall inspect and examine all lands held under lease from the state, providing for the payment of royalties from the production therefrom, and report to the director of the state board of land commissioners the condition of said lands and the amount of work and development done thereon by such lessees and make such recommendations relative thereto as the minerals director may deem advisable. The minerals director or such director's designee or contractor shall upon ten days notice have access during normal business hours to records and books necessary to determine the royalty due from the production and disposition of all substances produced from state trust lands, which record or book is in the possession or under the control of the lessee or the lessee's assign. If after reasonable effort the minerals director or such director's designee or contractor is unable to obtain sufficient information from the lessee or assign to determine the royalty due, the director or designee or contractor may petition the state board of land commissioners for an order which upon notice and hearing shall grant access to information, records, and books pertaining to royalties that are in the possession or under the control of any entity that purchases, distributes, processes, or transports the substance produced from the state trust land. Except as is necessary to determine and report to the board royalties due to the board, all information acquired by the director or director's designee or contractor under this subsection (2) shall be protected as confidential information and shall not be a matter of public record in the absence of a written release from the entity from which the information was obtained or until otherwise ordered by a court.

Source: L. 19: p. 653, § 31. C.L. § 1184. CSA: C. 134, § 83. CRS 53: § 112-3-39. C.R.S. 1963: § 112-3-39. L. 97: Entire section amended, p. 847, § 31, effective May 21.

Cross references: For inquiries by the director of the division of labor into relations existing between lessees of state lands and the state, see § 8-1-122.

36-1-139. Royalties on coal - ton defined. (Repealed)

Source: L. 19: p. 654, § 32. L. 21: p. 739, § 1. C.L. § 1185. L. 25: p. 468, § 1. CSA: C. 134, § 84. L. 53: p. 454, § 1. CRS 53: § 112-3-40. C.R.S. 1963: § 112-3-40. L. 97: Entire section repealed, p. 848, § 32, effective May 21.

36-1-140. Mineral locations - posting - lease. Location of mineral claims, other than claims for coal and oil shale, may be made upon unleased mineral lands belonging to the

state. The discoverer of a body of mineral in either a lead, lode, ledge, deposit, vein, or contact shall immediately post conspicuously a notice declaring that he has made such a discovery on the date attached to the notice. Within ten days after posting said notice, the discoverer must notify the state board of land commissioners of said discovery and arrange for a permit to explore the extent of the discovery. Within sixty days from date of discovery, the locator shall be required to take a lease upon such terms as may be agreed upon by the state board of land commissioners or apply for an extension of the permit.

Source: L. 19: p. 655, § 33. C.L. § 1186. CSA: C. 134, § 85. CRS 53: § 112-3-41. L. 55: p. 684, § 1. C.R.S. 1963: § 112-3-41. L. 80: Entire section amended, p. 694, § 1, effective April 13.

Cross references: For lode claims, see article 43 of title 34.

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Colorado Legislative Session — Mining", see 28 Rocky Mt. L. Rev. 56 (1955). For comment on Dallas v. Fitzsimmons (cited below), see 35 Dicta 208 (1958).

Mineral location statutes should, as between conflicting claimants to mineral lands, be liberally construed so as to protect bona fide locators, with due regard for a fair application of the statutory requirements. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Until the secretary of the interior makes the discretionary decision to classify lands selected by the state as indemnity land in lieu of designated school lands, the state has only an incipient prospect of future ownership of the selected lands, and these properties cannot be considered lands belonging to the state. Occidental Oil Shale v. St. Bd. of Land Comm'rs, 692 P.2d 321 (Colo. 1984), cert. denied, 474 U.S. 817, 106 S. Ct. 62, 88 L. Ed. 2d 50 (1985).

This section cannot retroactively affect prior vested rights. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

The leasing powers of the board under § 36-1-113 are subject to the implied limitation that it cannot lease state land already properly in the physical possession of others under the mining laws. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Where mineral lode locations are made on state lands in compliance with the state laws relating to discovery, posting, notice, and other applicable provisions, such claims take priority over a subsequent mineral lease issued by a duly authorized state leasing agency. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Mineral, in the statutory discovery sense, means valuable rock in place subject of de-

finable boundaries. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

The finding of the mineral in the rock in place, as distinguished from float rock, constitutes a discovery, and warrants a prospector in making a location of a mining claim. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Discovery is a question of fact. Whether a vein or lode has been discovered or exists within the limits of a location and whether continuity of ore and mineral matter constituting the length, width, and extent of a particular vein or lode is sufficiently shown is always a question of fact to be determined by a court or jury. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Radiometric evidence coupled with other evidence may constitute discovery. Although technical prospecting methods, such as the use of counters and scintillators, are only exploration tools and not complete exploration and discovery systems, radiometric results coupled with other evidence, such as the assay and type of rock in place, show an overall fair compliance with the statute requiring discovery. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

Discovery must be within the limits of the claim located. K.C.R. Res. v. State Bd. of Land Comm'rs, 691 P.2d 330 (Colo. 1984) (decided under law in effect prior to 1980 amendment).

Discovery may be shown to extend to adjacent claimed locations. Where competent radiometric reactions, supported by chemical assays as to part of the claimed locations, clearly show the presence of uranium on adjacent claimed locations, showing the same or similar radiometric readings, the latter are valid discoveries under the statute as much so as are outcrops visible to the naked eye. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

36-1-141. Exchange of lands with government. The state board of land commissioners is authorized to exchange any lands, the income from which is devoted to the public

schools of the state, the state universities, the state agricultural college, penitentiary, internal improvements, or saline or any other lands which may be under the control of the state board of land commissioners and which may have been granted to the state by the congress of the United States, for such unappropriated federal lands in the state as the state board of land commissioners may select. The director of said board is empowered to sign all papers necessary to such transfer, under the direction of the board.

Source: L. 19: p. 655, § 34. C.L. § 1187. CSA: C. 134, § 86. CRS 53: § 112-3-42. C.R.S. 1963: § 112-3-42. L. 97: Entire section amended, p. 849, § 33, effective May 21.

36-1-142. Receipts from agricultural lands. The state board of land commissioners is required to transmit or cause to be transmitted to the secretary of the board of governors of the Colorado state university system, as the same are received, statements showing each item of receipt of money from all leases or sales and royalties, or as interest on purchase money passing through its hands, derived from agricultural college land grant land, which statement shall name and describe the lands to which the money paid applies, from whom and for what received, and whether the item is credited to land income or permanent fund.

Source: L. 15: p. 389, § 1. C.L. § 1188. CSA: C. 134, § 87. CRS 53: § 112-3-43. C.R.S. 1963: § 112-3-43. L. 2002: Entire section amended, p. 1248, § 25, effective August 7.

36-1-143. Statement to board of governors of the Colorado state university system.

(1) On or before the second Wednesday in December of every year, the state board of land commissioners shall furnish to the board of governors of the Colorado state university system a complete statement of all transactions had by it in connection with agricultural college lands, which statement shall show:

- (a) Amounts received from sales of such lands, describing the lands sold and the price received for each tract and giving the name of the purchaser;
- (b) Amounts received from leases and royalties, describing the lands leased from which such income is derived and giving the name of the lessee or operator;
- (c) Amounts received as interest on purchase money and other items, giving the name of the payer;
- (d) Amounts due and unpaid on purchases and leases and other delinquencies, if any;
- (e) Such other items as will enable said board of governors of the Colorado state university system to keep informed as to the condition of said lands, the income therefrom, and the manner in which the same are being administered.

Source: L. 15: p. 389, § 2. C.L. § 1189. CSA: C. 134, § 88. CRS 53: § 112-3-44. C.R.S. 1963: § 112-3-44. L. 2002: (1) amended, p. 1248, § 26, effective August 7.

36-1-144. Agreements with general agencies. The state board of land commissioners is authorized to enter into cooperative agreements on behalf of the state with any federal agency for the improvement and betterment of state owned lands and to furnish necessary materials and tools in connection therewith.

Source: L. 37: p. 941, § 1. CSA: C. 134, § 88(1). CRS 53: § 112-3-45. C.R.S. 1963: § 112-3-45.

36-1-145. Land commissioners' receipts - appropriation. (1) All moneys collected by the state board of land commissioners shall be deposited with the state treasurer. Moneys received by the state board of land commissioners for fees and services shall be credited by the state treasurer to the state board of land commissioners land and water management fund created in section 36-1-148. All other moneys deposited by the state board of land commissioners shall be credited by the state treasurer to the proper funds as provided by law.

(2) (a) The state land board trust administration fund is hereby created in the state treasury for the purposes specified in paragraph (b) of this subsection (2).

(b) The general assembly shall annually appropriate moneys from the state land board trust administration fund sufficient to pay for the salaries of employees of the state board of land commissioners and expenses and per diem allowances of commissioners and all other expenses incurred in administering the provisions of articles 1 to 7 of this title and sections 9 and 10 of article IX of the Colorado constitution. Each land grant administered by the state board of land commissioners shall be charged with the expense of its administration.

(c) Any moneys remaining in the state land board trust administration fund at the end of the state fiscal year shall be allocated to the trust funds under the control of the state board of land commissioners in an amount equal to the proportion of such moneys that would have been paid into such trust funds but for their allocation to the state land board trust administration fund; except that moneys in the financial warranty account of the fund created in paragraph (e) of this subsection (2) shall remain in the account until spent.

(d) (Deleted by amendment, L. 97, p. 850, § 34, effective May 21, 1997.)

(e) There is hereby created in the state land board trust administration fund the financial warranty account, consisting of financial warranties credited to the account pursuant to section 36-1-129 (3). The board shall expend moneys in the account only for purposes specified in section 36-1-129 (3).

(3) The general assembly shall allocate moneys to the state land board trust administration fund from the income generated by the state trust lands. The allocations to the fund and the appropriations to the state board of land commissioners shall be sufficient to enable the state board of land commissioners to perform its duties.

Source: L. 57: pp. 592, 593, §§ 1, 2. CRS 53: § 112-3-46. C.R.S. 1963: § 112-3-46. L. 71: p. 1096, § 1. L. 79: (1) amended, p. 1346, § 2, effective July 1. L. 83: (2) R&RE, p. 1380, § 1, effective July 1. L. 85: (2)(a) and (2)(d) amended, p. 1143, § 1, effective June 6. L. 89: (2)(c) and (2)(d) amended, p. 1415, § 1, effective April 6. L. 92: (1) amended, p. 1910, § 2, effective March 4. L. 95: (2)(a) and (2)(d) amended, p. 456, § 1, effective May 16. L. 97: Entire section amended, p. 850, § 34, effective May 21. L. 2007: (2)(b) amended, p. 2048, § 93, effective June 1. L. 2010: (2)(c) amended and (2)(e) added, (HB 10-1165), ch. 124, p. 413, § 4, effective April 15.

36-1-146. Acquisition of right-of-way. (Repealed)

Source: L. 63: p. 750, § 1. C.R.S. 1963: § 112-3-47. L. 97: Entire section repealed, p. 851, § 35, effective May 21.

36-1-147. Geothermal leases. (1) The state board of land commissioners may lease any portion of the land of the state, or any interest therein, for the purposes of exploring for, producing, and developing the geothermal resources thereunder at a rental to be determined by the board, except as provided in sections 36-1-113, 36-1-118, and 36-1-147.5.

(2) The geothermal leasing arrangements authorized by subsection (1) of this section shall include provision for:

(a) The filing of a surety bond to assure compliance with the lease terms and the requirements of article 90.5 of title 37, C.R.S.;

(b) Royalties on both the geothermal resource and its by-product;

(c) The protection of the environment, including but not necessarily limited to the air quality, the ground and surface water quality, and the land surface, as well as the rest of the environment.

(3) The geothermal leasing arrangements authorized by subsection (1) of this section are to be administered by the state board of land commissioners in a manner which encourages the maximum economic recovery of geothermal resources, prevents waste of said resources, and protects the public interest in the lands of the state by requiring the

exploration for the development and protection of geothermal resources to proceed in an environmentally acceptable manner.

(4) All existing leases on state lands for the development of geothermal resources are hereby validated as though they had been issued pursuant to the authority of this article.

Source: **L. 74:** Entire section added, p. 315, § 6, effective May 17. **L. 83:** (2)(a) amended, p. 1424, § 4, effective June 10. **L. 2007:** (1) amended, p. 620, § 2, effective August 3.

36-1-147.5. Leasing arrangements for renewable energy resources development - legislative declaration - definitions. (1) The general assembly hereby finds and declares that some of the public lands under the direction, control, and disposition of the state board of land commissioners are viable for development of renewable energy resources and therefore are of unique economic value to the state for the funding of public schools.

(2) As used in this section, unless the context otherwise requires:

(a) "Biomass" means:

(I) Nontoxic plant matter consisting of agricultural crops or their by-products, urban wood waste, mill residue, slash, or brush;

(II) Animal wastes and products of animal wastes; or

(III) Methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(b) "Renewable energy resources" means energy derived from solar, wind, geothermal, biomass, and hydroelectricity. A fuel cell using hydrogen derived from these eligible resources is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible resources.

(3) (a) Except as specified in paragraph (b) of this subsection (3), the state board of land commissioners shall examine property currently under the direction, control, and disposition of the board to identify land suitable and appropriate for development of renewable energy resources. In identifying such property the board shall collaborate with the national renewable energy laboratory, university of Colorado, Colorado state university, and Colorado school of mines. The board shall also work with federal land management agencies to pursue any state and federal collaboration for the development of renewable energy resources.

(b) and (c) Repealed.

(4) The state board of land commissioners shall collaborate with the Colorado energy office created in section 24-38.5-101, C.R.S., to ensure that potential renewable energy resource developers are aware of any lands identified by the board as being suitable for development of renewable energy resources.

(5) The state board of land commissioners may lease any portion of the land of the state, or any interest therein, for the purposes of developing renewable energy resources at a rental to be determined by the board, except as provided in sections 36-1-113, 36-1-118, and 36-1-147.

(6) The leasing arrangements for renewable energy resources development authorized by subsection (5) of this section shall include provisions for:

(a) Royalties on the energy produced through the renewable energy resources; and

(b) The protection of the environment, including but not limited to wildlife habitat, air quality, ground and surface water quality, and land surface.

(7) All existing leases on state lands for the development of renewable energy resources are hereby validated as though they had been issued pursuant to the authority of this section.

Source: **L. 2007:** Entire section added and (3) amended, pp. 621, 622, §§ 3, 4, effective August 3. **L. 2008:** (4) amended, p. 72, § 12, effective March 18. **L. 2010:** (3)(c) added, (HB 10-1349), ch. 387, p. 1816, § 3, effective June 8. **L. 2012:** (4) amended, (HB 12-1315), ch. 224, p. 976, § 41, effective July 1.

Editor's note: (1) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective December 1, 2007. (See L. 2007, p. 622.)

(2) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2011. (See L. 2010, p. 1816.)

36-1-148. Land and water management fund. (1) There is hereby created the state board of land commissioners land and water management fund. Such fund is to be generated from fees collected under the provisions of section 36-1-112. The fund is to be under the control of and to be administered by the state board of land commissioners. The fund is to be used only for the management and the improvement of state-owned lands and waters under the control of the state board of land commissioners. Each such improvement or management program is to be for the purpose of complying with the provisions of sections 9 and 10 of article IX of the state constitution; except that, for each such improvement made to state-owned lands utilized for agricultural purposes, the lessee shall contribute no less than twenty percent of the cost of such improvement, by written agreement with the state board of land commissioners.

(2) The state treasurer shall establish such fund from fees submitted pursuant to section 36-1-112. All such fees submitted shall be credited to such fund. Expenditures from such fund shall not exceed seventy-five thousand dollars in any fiscal year. Any balance in said fund at the close of a fiscal year in excess of seventy-five thousand dollars shall revert to the general fund, and the board shall reduce its fees accordingly.

(3) The controller shall authorize disbursements from said fund as directed by the state board of land commissioners on receipt of a voucher from said commissioners stating that the disbursement is to accomplish a purpose set forth in subsection (1) of this section.

(4) and (5) Repealed.

Source: L. 79: Entire section added, p. 1347, § 3, effective July 1; (5) added by revision, p. 1347, §§ 4, 5. L. 83: (4) amended, p. 844, § 76, effective July 1. L. 85: Entire section RC&RE, p. 1145, § 1, effective May 3. L. 89: (5) amended, p. 1415, § 2, effective April 6. L. 92: (2) amended, p. 1911, § 3, effective March 4. L. 95: (5) repealed, p. 457, § 2, effective May 16. L. 96: (4) amended, p. 1222, § 21, effective August 7. L. 97: (1) amended, p. 851, § 36, effective May 21. L. 2002: (4) repealed, p. 880, § 13, effective August 7.

Editor's note: Subsection (5) provided for the repeal of this section, effective January 1, 1985. (See L. 79, p. 1347.)

Cross references: For the legislative declaration contained in the 1996 act amending subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

36-1-149. Cultivation of state land - legislative declaration. (1) In no case shall a lessee of state land be allowed to convert native grassland to cultivated land so long as the federal government has in place incentives intended to encourage the reduction of the amount of land under cultivation when such incentive is applicable in Colorado.

(2) Subsection (1) of this section shall not apply to a lessee who wishes to convert native grassland to cultivated land on a single parcel of state land which is twenty-five acres or less in size and which is contiguous to other land owned or leased by that lessee which is being cultivated at the time of the proposed conversion.

(3) The general assembly hereby finds and declares that this section is enacted to assure that this state's grasslands and topsoil, invaluable and nonrenewable resources, are protected and preserved for future generations. Additionally, this section is enacted to further the national and state interest in maintaining the highest price levels for agricultural products by reducing the amount of land under cultivation and thereby reducing the supply of such products. In furthering this national and state interest, the state is also assuring that existing and future leases of state land will continue to provide the maximum possible revenue to the state.

Source: L. 87: Entire section added, p. 1293, § 1, effective June 20.

36-1-150. Conservation easements. The state board of land commissioners may sell or lease conservation easements, licenses, or other similar interests in land in accordance with the provisions of sections 9 and 10 of article IX of the state constitution.

Source: L. 97: Entire section added, p. 851, § 37, effective May 21.

36-1-151. Public schools - access to state lands. The state board of land commissioners shall allow access to state trust lands by public schools without charge for outdoor educational purposes so long as such access does not conflict with uses previously approved by the board on such lands.

Source: L. 97: Entire section added, p. 851, § 37, effective May 21.

36-1-152. Public school districts - charter schools - lease, purchase, or other use of state lands. (1) The state board of land commissioners shall provide opportunities for public school districts within which school trust lands are located to lease, purchase, or otherwise use such lands or portions thereof as are necessary for school building sites, at an amount to be determined by the board, which shall not exceed the appraised fair market value, which amount may be paid over time.

(2) The state board of land commissioners may provide opportunities for charter schools that are authorized by school districts pursuant to part 1 of article 30.5 of title 22, C.R.S., or charter schools that are authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22, C.R.S., to lease, purchase, or otherwise use school trust lands, or portions thereof, for school building sites. Prior to such lease, purchase, or other use of school trust lands by a charter school, the charter school shall notify the school district in which the land is located that the charter school is seeking to lease, purchase, or otherwise use state trust lands located within that school district for school building sites for the charter school. The state board of land commissioners shall request written comment from the school district in which the school trust lands that may be leased, purchased, or otherwise used by a charter school are located, indicating the impact such lease, purchase, or use will have on the school district. The board shall determine the amount a charter school shall be required to pay to lease, purchase, or otherwise use said lands, which amount shall not exceed the appraised fair market value and may be paid over time.

Source: L. 97: Entire section added, p. 852, § 37, effective May 21. **L. 2009:** Entire section amended, (SB 09-022), ch. 246, p. 1110, § 3, effective May 14.

36-1-153. Investment and development fund. (1) There is hereby created the state board of land commissioners investment and development fund, referred to in this section as the "fund". The fund shall consist of moneys credited to the fund pursuant to section 36-1-116 (1) (b) (II). Any balance in the fund at the close of a fiscal year and any interest earned on moneys in the fund shall remain in the fund and shall not revert to the permanent school fund. The fund is to be under the control of and to be administered by the state board of land commissioners. Moneys in the fund shall be continuously appropriated to the state board for the purposes set forth in this section.

(2) Moneys in the fund shall be used at the discretion of the state board of land commissioners to hire staff, contract for services, make purchases, and take such other actions as the state board deems appropriate to provide for the development of additional value-added benefit for the state's trust lands, including both portfolio enhancement and additional income. Such actions may include, but are not limited to, the rezoning, platting, master planning, or other development activities that increase the value of or rate of return from the state's trust lands.

(3) The controller shall authorize disbursements from the fund as directed by the state board of land commissioners on receipt of a voucher from the state board stating that the disbursement is to accomplish a purpose set forth in this section.

(4) On or before January 31, 2006, and each January 31 thereafter through January 31, 2011, and on or before November 1, 2011, and on or before each November 1 thereafter, the state board of land commissioners shall deliver information on the portfolio enhancement and additional income generated as a result of this section as specified in section 36-1-102 (8). Each report shall include estimates of the increase in portfolio enhancement and income for the then-current fiscal year and the five succeeding state fiscal years.

(5) and (6) Repealed.

Source: L. 2005: Entire section added, p. 537, § 2, effective May 24. **L. 2009:** (5) and (6) repealed, (SB 09-022), ch. 246, p. 1111, § 4, effective May 14. **L. 2011:** (4) amended, (SB 11-029), ch. 51, p. 133, § 2, effective August 10.

36-1-153.5. Annual income and inventory report. (1) On or before November 1, 2011, and on or before each November 1 thereafter, the state board of land commissioners shall prepare an annual income and inventory report. The report shall include the following:

(a) Data regarding the income earned from lands held in trust by the board, including:

(I) A summary of the total revenues earned during the previous fiscal year from all lands held in trust by the board;

(II) A summary of the total revenues earned during the previous fiscal year from lands in each individual trust held by the board;

(III) A summary of the trends in revenue that have occurred in connection with the lands held in trust by the board; and

(IV) A summary of the anticipated growth in revenue and revenue trends in connection with the lands held in trust by the board;

(b) A summary of the state board of land commissioners' land inventory as of the date of the report, including the number of surface acres and subsurface acres in each individual trust held by the board; and

(c) The amount transferred to the public school capital construction assistance fund on the immediately preceding July 1, pursuant to section 22-43.7-104 (2) (b) (I), C.R.S.

(2) The state board of land commissioners shall deliver the annual income and inventory report as specified in section 36-1-102 (8).

Source: L. 2011: Entire section added, (SB 11-029), ch. 51, p. 133, § 3, effective August 10.

36-1-154. Severability. If any provision of this article is held invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision.

Source: L. 2009: Entire section added, (HB 09-1317), ch. 381, p. 2073, § 4, effective June 2.

ARTICLE 2

Rights of Occupants

Cross references: For locating mining claims, see article 43 of title 34.

36-2-101.	Right of citizens claiming.		mines.
36-2-102.	Declaration of occupation.	36-2-108.	Settler may maintain trespass.
36-2-103.	Interest transferable.	36-2-109.	Inclosure not necessary in suit.
36-2-104.	Rights acquired before and after November 7, 1861.	36-2-110.	Claim must be marked.
36-2-105.	Form of declaration of occupant.	36-2-111.	Neglect to occupy - fence - plow.
36-2-106.	Effect of declaration or deed.	36-2-112.	Town lots - abandonment - mining districts.
36-2-107.	Declaration not to include		

36-2-113.	Right of United States not denied.	36-2-116.	Assessment of damage to improvements.
36-2-114.	Mining claims not affected.	36-2-117.	Justification of sureties.
36-2-115.	Mining under claim - bond - damages.	36-2-118.	Weekly demand of damages.

36-2-101. Right of citizens claiming. Conceding to the United States the primary and paramount right to dispose of the soil of this state, according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared that as between all the good citizens residing in this state, and as between them, or any of them, and others, having or claiming, or pretending to have or claim, any right to occupy, possess, and enjoy any portion of the public domain situate within the boundaries of this state, and as between each and every one of them, and all other persons, associations, corporations, and powers except the government of the United States, the right as the same may exist under the local laws, to occupy, possess, and enjoy any tract or portion thereof, shall be respected in law in all the courts and tribunals of this state.

Source: R.S. p. 531, § 1. G.L. § 2124. G.S. § 2674. R.S. 08: § 5120. C.L. § 1103. CSA: C. 134, § 1. CRS 53: § 112-1-1. C.R.S. 1963: § 112-1-1.

ANNOTATION

Law reviews. For article, "The Public Domain in Colorado", see 13 Rocky Mt. L. Rev. 296 (1941).

It was the design and intention of the general assembly to clothe title by occupancy with the character of real estate. Gillett v. Gaffney, 3 Colo. 351 (1877); Cooper v. Hunter, 8 Colo. App. 101, 44 P. 944 (1896).

By virtue of this and the following sections, occupancy became an investive act. It invested the occupant with a tenure, assertable and defensible in mode and manner, as the highest estate known to the common law. It was not, therefore, a mere "naked possession", but a legal possession under the sanction, recognition, and protection of the law. Gillett v. Gaffney, 3 Colo. 351 (1877).

The right to possess land is same as that of owner of fee at common law. Upon the adjournment of the first general assembly, except as against the United States, and subject to be defeated by abandonment, the bona fide occupant held his lands by a tenure as secure against attack, intrusion, and disseizing, as the owner of the fee at common law and, with the exceptions

named, had a title good against all the world. Gillett v. Gaffney, 3 Colo. 351 (1877).

The right to possess land is unassailable as if held by patent. So long as the claimant and his assigns comply with the provisions of this and the following sections, their right to possess and enjoy the land appropriated is as unassailable, except by the general government, or persons connecting themselves with the title of general government, as if they held it by patent of the United States. Cooper v. Hunter, 8 Colo. App. 101, 44 P. 944 (1896).

Title to such land is descendible. Title by occupancy of land subject to entry under the acts of congress, as town sites, must, under this and the following sections, be held to be descendible. Gillett v. Gaffney, 3 Colo. 351 (1877).

A survey of public lands made by the proper officers of the United States, and confirmed by the land department, is not open to challenge by any collateral attack in the courts. Russell v. Maxwell Land Grant Co., 158 U.S. 253, 15 S. Ct. 827, 39 L. Ed. 971 (1895); Colo. Fuel Co. v. Maxwell Land Grant Co., 22 Colo. 71, 43 P. 556 (1895).

36-2-102. Declaration of occupation. All rights of occupancy, possession, and enjoyment of any tract or portion of the public domain, except mining claims, acquired after January 10, 1868, shall be expressed and described in a declaration, in cases of original occupation, and by a deed in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

Source: R.S. p. 531, § 2. G.L. § 2125. G.S. § 2675. R.S. 08: § 5121. C.L. § 1104. CSA: C. 134, § 2. CRS 53: § 112-1-2. C.R.S. 1963: § 112-1-2.

ANNOTATION

An entryman who files his declaration acquires no rights as against the United States or its grantees. *Farmers' High Line Canal Co. v. Moon*, 22 Colo. 560, 45 P. 437 (1896).

Applied in *Gillett v. Gaffney*, 3 Colo. 351 (1877).

36-2-103. Interest transferable. The owner of every claim or improvement, on every tract or parcel of land, has a transferable interest therein, which may be sold in execution or otherwise. Any sale of such improvement is a sufficient consideration to sustain a promise.

Source: R.S. p. 531, § 3. G.L. § 2126. G.S. § 2676. R.S. 08: § 5122. C.L. § 1105. CSA: C. 134, § 3. CRS 53: § 112-1-3. C.R.S. 1963: § 112-1-3.

ANNOTATION

The right of occupancy and possession that are mentioned in this section and § 36-2-104 are such as exist between occupants of the public domain whose rights are dependent upon occupancy alone and not upon any right derived from the general government. Such rights in no measure interfere with the paramount title of the United States or its disposal of the land to one who acquires the right to purchase it under the act of congress, and are terminated whenever its title passes to such purchaser.

McMillen v. Gerstle, 19 Colo. 98, 34 P. 681 (1893).

The right-of-way privilege conferred upon railroads by act of congress of March 3, 1875, did not attach on the filing and acceptance of the company's articles of incorporation and proofs of organization, but when the line of road was definitely fixed, either by actual construction or the filing of a map showing its definite location. *Denver & R. G. R. R. v. Hanoum*, 19 Colo. 162, 34 P. 838 (1893).

36-2-104. Rights acquired before and after November 7, 1861. All rights of occupancy, possession, and enjoyment of any tract or portion of the public domain, acquired before November 7, 1861, shall be ascertained, adjudged, and determined by the local law of the district or precinct in which the tract is situated, as it existed on the day when such rights were acquired, or as it thereafter has existed; and if there were no local laws at that time, then by the common custom then prevailing in respect to such property in the district or precinct in which it existed. All such rights of occupancy, possession, and enjoyment, acquired since November 7, 1861, shall be ascertained, adjudged, and determined by the laws of this state in force at the date of such acquisition.

Source: R.S. p. 531, § 4. G.L. § 2127. G.S. § 2677. R.S. 08: § 5123. C.L. § 1106. CSA: C. 134, § 4. CRS 53: § 112-1-4. C.R.S. 1963: § 112-1-4.

ANNOTATION

For rights of occupancy and possession and their relation to the paramount title of the United States, see *McMillen v. Gerstle*, 19 Colo. 98, 34 P. 681 (1893).

Rules of a district relating to the location of mill sites must yield to the act of congress providing that mill sites could only be legally located upon non-mineral lands, insofar as they relate to the location of such sites upon mineral lands. *Cleary v. Skiffich*, 28 Colo. 362, 65 P. 59 (1901).

In the year 1860, a valid location of a mining claim on the public domain could be

made only according to the rules, usages, and customs of miners in the district where such claim was situated. *Sullivan v. Hense*, 2 Colo. 424 (1874).

Judicial notice could not be taken of the rules, usages, and customs of mining districts; they had to be proved at the trial like any other fact, by the best evidence that could be obtained respecting them. *Sullivan v. Hense*, 2 Colo. 424 (1874).

36-2-105. Form of declaration of occupant. The declaration by an occupant of a tract or portion of the public domain, required by section 36-2-102, shall be substantially in the following form:

To all whom these presents may concern:

Know ye, That I, A.B., of, in the county of, in the state of Colorado, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land, not exceeding one hundred and sixty acres, situate in the township of, in the county of, in the state of Colorado, bounded and described as follows:
(Here insert the description) together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal, this day of, 20(To be subscribed with the full first name and surname of the person making the application, and acknowledged in the same manner as a deed of real estate.)

Source: R.S. p. 532, § 5. G.L. § 2128. G.S. § 2678. R.S. 08: § 5124. C.L. § 1107. CSA: C. 134, § 5. CRS 53: § 112-1-5. C.R.S. 1963: § 112-1-5. L. 73: p. 612, § 3.

Cross references: For acknowledgment of a deed of real estate, see article 35 of title 38.

36-2-106. Effect of declaration or deed. In all proceedings in any court of this state, the record of any declaration, deed, or mortgage, or other muniments of right, referred to in sections 36-2-103 and 36-2-105, shall be received, except as against the United States, and all persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the time of its execution; and, if the regularity thereof is challenged, the burden of proving the alleged irregularity shall rest upon the party making the challenge.

Source: R.S. p. 532, § 6. G.L. § 2129. G.S. § 2679. R.S. 08: § 5125. C.L. § 1108. CSA: C. 134, § 6. CRS 53: § 112-1-6. C.R.S. 1963: § 112-1-6.

36-2-107. Declaration not to include mines. The declaration of every occupant of any tract or portion of the public domain, mentioned in section 36-2-105, shall not be construed to include any gold-bearing quartz lodes, silver lode, or gold diggings; but said lodes and diggings shall be excepted from the tract of said occupant and shall be subject to be occupied, possessed, and enjoyed as provided in section 36-2-115.

Source: R.S. p. 532, § 7. G.L. § 2130. G.S. § 2680. R.S. 08: § 5126. C.L. § 1109. CSA: C. 134, § 7. CRS 53: § 112-1-7. C.R.S. 1963: § 112-1-7.

Cross references: For lode claims, see article 43 of title 34.

36-2-108. Settler may maintain trespass. Any person settled upon any of the public lands belonging to the United States may maintain trespass, ejectment, forcible entry and detainer, unlawful detainer, and forcible detainer for injuries done to the possession thereof.

Source: R.S. p. 532, § 8. G.L. § 2131. G.S. § 2681. R.S. 08: § 5127. C.L. § 1110. CSA: C. 134, § 8. CRS 53: § 112-1-8. C.R.S. 1963: § 112-1-8.

Cross references: For marking of claims, see § 36-2-110; for paramount right of United States, see § 36-2-113.

ANNOTATION

Title by occupancy raised to dignity of real estate. These are all actions applicable only to real estate, and show a clear purpose upon the part of the general assembly to raise title by occupancy to the dignity of real estate, and to surround its tenure with all the safeguards, its transfer with all the formalities, and its enjoyment with all the securities of a fee simple title. *Gillett v. Gaffney*, 3 Colo. 351 (1877).

This section was not intended to apply to town lots. *Tucker v. McCoy*, 8 Colo. 368, 8 P. 667 (1885).

Statutory remedies are exclusive. The only right to invoke the aid of the law as between different settlers on the public domain for the invasion or injury of their respective possessory rights is that given by statute, and the only remedies are the statutory remedies enumerated in this section. *Adkison v. Hardwick*, 12 Colo. 581, 21 P. 907 (1889).

Strict compliance is required. To avail himself of the benefits of this section, a settler must comply strictly with § 112-1-110, CRS 53 (now

§ 36-2-110), relating to the marking of boundaries. *Martin v. Pittman*, 3 Colo. App. 220, 32 P. 840 (1893).

A person having title to occupy a mining claim may maintain an action against one trespassing thereon, and such action lies for injury to the growing timber, as well as to the mineral product of the soil itself. *McFeters v. Pierson*, 15 Colo. 201, 24 P. 1076 (1890).

Where officers are considering conflicting claims. The courts are without jurisdiction to determine the right of contending parties to purchase public land while a controversy is being waged before the proper officers to settle such right. *Fulmele v. Camp*, 20 Colo. 495, 39 P. 407 (1895).

Officer's jurisdiction to prevent the wrongful invasion of the possession of one in the actual occupancy of the public domain, so long as the title remains in the government, is essential to the maintenance of the peace and order of the community. *Fulmele v. Camp*, 20 Colo. 495, 39 P. 407 (1895).

36-2-109. Inclosure not necessary in suit. On the trial of any such cause the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain any of the actions provided in section 36-2-108, without being compelled to prove an actual inclosure; but each claim shall not exceed in any case one hundred and sixty acres of land.

Source: R.S. p. 533, § 9. G.L. § 2132. G.S. § 2682. R.S. 08: § 5128. C.L. § 1111. CSA: C. 134, § 9. CRS 53: § 112-1-9. C.R.S. 1963: § 112-1-9.

36-2-110. Claim must be marked. Every claim, to entitle the holder to maintain any of the actions stated in section 36-2-108, shall be marked out so that the boundaries may be readily traced and the extent of such claim easily known. No person shall be entitled to maintain any of the actions for possession of, or injury done to, any claim unless he occupies the same or makes improvements thereon to the value of one hundred dollars. .

Source: R.S. p. 533, § 10. G.L. § 2133. G.S. § 2683. R.S. 08: § 5129. C.L. § 1112. CSA: C. 134, § 10. CRS 53: § 112-1-10. C.R.S. 1963: § 112-1-10.

Cross references: For applicability of section, see § 36-2-114.

ANNOTATION

Strict compliance required. The action under § 36-2-108 is purely statutory. The statute is in derogation of the common law, and a party, to avail himself of its benefits, must prove strict

compliance with the requirements of this section. *Martin v. Pittman*, 3 Colo. App. 220, 32 P. 840 (1893).

36-2-111. Neglect to occupy - fence - plow. A neglect to occupy the claim, or to inclose at least five acres with a reasonable fence, or to plow at least five acres of the same for the period of six months shall be considered such an abandonment as to preclude the claimant from maintaining any of the actions stated in section 36-2-108.

Source: R.S. p. 533, § 11. G.L. § 2134. G.S. § 2684. R.S. 08: § 5130. C.L. § 1113. CSA: C. 134, § 11. CRS 53: § 112-1-11. C.R.S. 1963: § 112-1-11.

Cross references: For applicability of section, see § 36-2-114.

ANNOTATION

Neglect not established. A failure to do those things required by this section at a time when another was, either by open defiance of a valid judgment, or by litigation which tied the hands

of the claimant, maintaining a possession which had been adjudicated illegal, was not due to "neglect". Rogers v. Bruce, 69 Colo. 298, 193 P. 1076 (1920).

36-2-112. Town lots - abandonment - mining districts. Any person who has a title to occupy any lot within any city or village plot, or any lots or mining claim within any mining district in this state by virtue of a certificate, deed of gift or purchase from the original claimant, or his assigns, as well as all purchasers, under any decree or execution of any of the so-called provisional government courts, people's or miners' courts, of the lands situate within any city or village plot, or any lots, lands, or mining claims situate within any mining district, together with the original claimant of the lots, lands, or mining claims, shall be entitled to maintain the actions authorized by section 36-2-108 against any person who enters upon and occupies the lots, lands, or mining claims, or any of them. It is lawful for the citizens of mining districts to declare an abandonment of any creek, river, gulch, bank, or mining claim a forfeiture of the rights of the claimants thereto; in which case the parties claimant shall not be enabled to maintain any of the actions mentioned in section 36-2-108.

Source: R.S. p. 533, § 12. G.L. § 2135. G.S. § 2685. R.S. 08: § 5131. C.L. § 1114. CSA: C. 134, § 12. CRS 53: § 112-1-12. C.R.S. 1963: § 112-1-12.

ANNOTATION

To maintain an action for injury to a mining claim, it is not necessary that the claimant should reside on the premises, nor that it should be inclosed or cultivated, nor that he should

have a *pedis possessio* of the claim, according to the common acceptance of that term. McFeters v. Pierson, 15 Colo. 201, 24 P. 1076 (1890).

36-2-113. Right of United States not denied. Nothing in this article shall be construed to deny the right of the United States to dispose of any lands in this state; nor shall the fact that the title to any lots, lands, lodes, or mining claims has not passed from the United States be any bar to the recovery of the plaintiff in any of the actions specified in section 36-2-108. As against the United States, and all persons holding any of the lands under the United States, or the laws thereof, this article shall be ineffective and void.

Source: R.S. p. 533, § 13. G.L. § 2136. G.S. § 2686. R.S. 08: § 5132. C.L. § 1115. CSA: C. 134, § 13. CRS 53: § 112-1-13. C.R.S. 1963: § 112-1-13.

ANNOTATION

Law reviews. For article, "The Myth of the Classic Property Clause Doctrine", see 63 Den. U.L. Rev. 495 (1986).

The rights given do not apply to land held under federal preemption or homestead laws. The law regulating the rights of settlers upon government land, as between themselves, has no force as applied to land which has been filed upon and is held under the preemption or home-

stead law of the United States. Union Pac. Ry. v. Kennedy, 12 Colo. 235, 20 P. 696 (1888).

There can be no recovery in ejectment against homestead claimant. An occupant of public lands claiming under this article will not be allowed to recover in ejectment against a claimant under the homestead act of the United States, and the plaintiff in such case will not be permitted to twist his action into an action for

trespass. *Rudolph v. Thompson*, 66 Colo. 98, 179 P. 151 (1919).

Squatter on "school land" acquired no rights as against the federal government. Where a squatter on "school land", which was given to the state by the national government, filed his declaratory statement as prescribed by § 36-2-105, whatever possessory rights were

thus conferred, it is clear, not only by virtue of the provisions of this section, but in the absence of such provision, the respondent acquired no rights of any kind as against the United States, or its grantees. *Farmers' High Line Canal & Reservoir Co. v. Moon*, 22 Colo. 560, 45 P. 437 (1896).

36-2-114. Mining claims not affected. Sections 36-2-110 and 36-2-111 are not intended and shall not be construed to affect or apply to mining claims but shall affect and be applicable to claims held or used for arable or pastoral agriculture only.

Source: R.S. p. 534, § 14. G.L. § 2137. G.S. § 2687. R.S. 08: § 5133. C.L. § 1116. CSA: C. 134, § 14. CRS 53: § 112-1-14. C.R.S. 1963: § 112-1-14.

36-2-115. Mining under claim - bond - damages. When any improvements are made upon any claim held or used for arable or pastoral agriculture or upon any building lot, mill site, or other lot or premises and any person demands of the claimant to mine any portion of the claim upon which such improvements have been made, it is lawful for the occupant or holder of the claim to require a good and sufficient bond, in a sum double the value of the improvements upon the land sought to be mined, from the party demanding to mine upon the claim, with two or more sureties, to be approved by the county court of the county in which the claim is situate conditioned that the party shall pay all damage which may be sustained by the occupant or holder of such claim to the improvements thereon.

Source: R.S. p. 534, § 15. G.L. § 2138. G.S. § 2688. R.S. 08: § 5134. C.L. § 1117. CSA: C. 134, § 15. CRS 53: § 112-1-15. C.R.S. 1963: § 112-1-16. L. 64: p. 301, § 257.

ANNOTATION

The provisions of this section are for the benefit of the surface owner. *Campbell v. Louisville Coal Mining Co.*, 39 Colo. 379, 89 P. 767 (1907).

Owner's failure to exact such security as a condition precedent to removing the minerals does not release the parties removing such min-

erals from the payment of damages occasioned by their negligence. *Campbell v. Louisville Coal Mining Co.*, 39 Colo. 379, 89 P. 767 (1907).

36-2-116. Assessment of damage to improvements. It is the duty of the county judge, by whom the bond is required to be approved in case the value of the improvements cannot be agreed upon by the claimant and the party seeking to mine, to appoint a day and hour to hear testimony respecting the value of the improvements which may be damaged by reason of such mining.

Source: R.S. p. 534, § 16. G.L. § 2139. G.S. § 2689. R.S. 08: § 5135. C.L. § 1118. CSA: C. 134, § 16. CRS 53: § 112-1-16. C.R.S. 1963: § 112-1-16. L. 64: p. 301, § 257.

36-2-117. Justification of sureties. It is the duty of the county judge to require the sureties entering into such bond to justify before him, each in the sum stated in the bond. If the claimant excepts to the sureties, or either of them, it is lawful for the judge, and he is required, to examine the sureties excepted to on oath, touching the sufficiency of said sureties; and, if the judge finds any of the sureties insufficient, it is the duty of the judge to require further sufficient sureties, which shall be likewise approved and justified.

Source: R.S. p. 534, § 17. G.L. § 2140. G.S. § 2690. R.S. 08: § 5136. C.L. § 1119. CSA: C. 134, § 17. CRS 53: § 112-1-17. C.R.S. 1963: § 112-1-17. L. 64: p. 301, § 258.

36-2-118. Weekly demand of damages. It shall be competent for the claimant to demand from the obligees in the bond, at any time after one week after mining is commenced on the claim, such sum as may be equal to the damage done to the improvements thereon, and after every week it shall be competent for the claimant to make a like demand, unless the payment of the damage done or to be done to the improvements shall by the claimant be postponed for a longer time.

Source: R.S. p. 534, § 18. G.L. § 2141. G.S. § 2691. R.S. 08: § 5137. C.L. § 1120. CSA: C. 134, § 18. CRS 53: § 112-1-18. C.R.S. 1963: § 112-1-18.

State Lands

ARTICLE 3

Desert Lands

36-3-101.	Acceptance of congressional grant.	36-3-113.	Provision for contract - bond.
36-3-102.	Selection and disposal of lands.	36-3-114.	Time for construction - forfeiture.
36-3-103.	Acceptance of conditions.	36-3-115.	Failure in construction.
36-3-104.	Control of land - Carey act fund.	36-3-116.	State not to be made liable.
36-3-105.	Record of proceedings of land board.	36-3-117.	Notice of land open for settlement.
36-3-106.	Duties and powers of register.	36-3-118.	Application to enter - requirements.
36-3-107.	Request for selection.	36-3-119.	Disposition of funds.
36-3-108.	Certified check with proposal.	36-3-120.	Duty of settler - proof of settlement.
36-3-109.	Application to state engineer - maps.	36-3-121.	Patent - water lien - foreclosure - deed.
36-3-110.	Examination of proposal - report.	36-3-122.	Requirements of maps.
36-3-111.	Board to consider proposal.	36-3-123.	Rules - report of construction company.
36-3-112.	Rejection of proposal - second proposal.	36-3-124.	Duties of employees - fees.
		36-3-125.	Record of work - publication.

36-3-101. Acceptance of congressional grant. The state of Colorado accepts the conditions of section 4 of an act of congress entitled "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894, and for other purposes, approved August 18, 1894.", together with all the grants of land to the state under the provisions of the act.

Source: L. 1895: p. 157, § 1. R.S. 08: § 5138. C.L. § 1121. CSA: C. 134, § 19. CRS 53: § 112-2-1. C.R.S. 1963: § 112-2-1.

Cross references: For the provisions of "An Act making an appropriation for sundry civil expenses of the government for the fiscal year ending June 30, 1894", see 43 U.S.C.S. § 641; chap. 301, section 4 of 28 Stat. 422, known as the Carey Act.

36-3-102. Selection and disposal of lands. The selection, management, and disposal of the land shall be vested in the state board of land commissioners.

Source: L. 1895: p. 157, § 2. R.S. 08: § 5139. L. 11: p. 304, § 1. C.L. § 1122. CSA: C. 134, § 20. CRS 53: § 112-2-2. C.R.S. 1963: § 112-2-2.

36-3-103. Acceptance of conditions. The state accepts the conditions of section 4 of an act of congress, entitled "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894.", together with all acts amendatory thereto, including the amendatory acts of congress of June 11, 1896, March 3, 1901, March 1, 1907, February 24, 1909, and March 15, 1910, together with all grants of land made or to be made under the provisions of the acts.

Source: L. 1895: p. 157, § 1. R.S. 08: § 5138. L. 11: p. 303, § 1. C.L. §§ 1121, 1123. CSA: C. 134, §§ 19, 21. CRS 53: § 112-2-3. C.R.S. 1963: § 112-2-3.

Cross references: For the provisions of "An Act making an appropriation for sundry civil expenses of the government for the fiscal year ending June 30, 1894", see 43 U.S.C.S. § 641; chap. 301, section 4 of 28 Stat. 422, known as the Carey Act.

36-3-104. Control of land - Carey act fund. The selection, management, and disposal of the land and all such lands as may be granted on or after June 1, 1911, to the state by the United States shall be vested in the state board of land commissioners as constituted, and that board is empowered to accept all moneys upon the part of the state from the purchasers of the land, and to place the same in a fund to be designated as the "Carey act fund", and to disburse the same as provided in this section. It is empowered to accept from the settlers, filing on lands under the provisions of the acts within the former Southern Ute and Ute Indian reservations, as defined in the amendatory acts of congress of March 1, 1907, and February 24, 1909, the sum of one dollar and twenty-five cents per acre for each acre thereof to be patented and to pay the same into the treasury of the United States. The board is authorized to accept any future grants of such lands by the United States to this state and to agree to and accept on behalf of the state any conditions that may be imposed by the United States in relation thereto.

Source: L. 11: p. 303, § 2. C.L. § 1124. CSA: C. 134, § 22. CRS 53: § 112-2-4. C.R.S. 1963: § 112-2-4. L. 96: Entire section amended, p. 1222, § 22, effective August 7.

Cross references: (1) For the "Carey Act" and amendments thereto, see 43 U.S.C. §§ 641-648; for duties of the state board of land commissioners, see article 1 of this title and §§ 9 and 10 of art. IX, Colo. Const.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

36-3-105. Record of proceedings of land board. The register of the board shall act as secretary, and it is his duty to keep a careful record of the transactions of the board in substantially bound books to be kept for that purpose and which shall be known as the record and proceedings of the state board of land commissioners under this article.

Source: L. 1895: p. 157, § 3. R.S. 08: § 5140. C.L. § 1125. CSA: C. 134, § 23. CRS 53: § 112-2-5. C.R.S. 1963: § 112-2-5.

36-3-106. Duties and powers of register. The register of the board shall have the custody of the records of the board, receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this article, prepare and keep for public inspection maps and plats on a scale of two inches to the mile of all lands selected, receive entries of settlers on these lands and hear or receive the final proof of their reclamation under the rules and regulations prescribed by the state board of land commissioners, and do all work required by the board in carrying out the provisions of this article. He shall have authority to administer oaths whenever necessary in the performance of his duties as register and secretary of the board.

Source: L. 1895: p. 157, § 4. R.S. 08: § 5141. C.L. § 1126. CSA: C. 134, § 24. CRS 53: § 112-2-6. C.R.S. 1963: § 112-2-6.

36-3-107. Request for selection. (1) Any person, company of persons, association, or incorporated company desiring to construct ditches, canals, or other irrigation works to reclaim land under the provisions of this article shall file with the board a request for the selection on behalf of the state by the board of the land to be reclaimed, designating said land by legal subdivisions. This request shall be accompanied by a proposal to construct the ditch, canal, or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be prepared in accordance with the rules of the board, and with the regulations of the department of the interior. It shall state the post-office address and residence of the parties; the source of water supply; the point of diversion; the place of storage, if stored; the location and dimensions of the proposed works; the estimated cost thereof; the carrying capacity of the ditch or canal; and the price and terms at which perpetual water rights will be sold to settlers on the land reclaimed. The perpetual right shall embrace a proportionate concurrent interest in the ditch, canal, or other irrigation works, together with all rights and franchises attached. All water rights sold or otherwise held under the ditch or canal shall have equal rights as to priority.

(2) The proportionate concurrent interest may be either in the form of shares of stock in a company which will ultimately own and control the works, or in the form of water right deeds or contracts, as may be determined by the board. All contracts for the sale of water rights under this article shall be in the form, and upon conditions, approved by the board. In the cases of incorporated companies, it shall state the name of the company, the purpose of the incorporation, the name and places of residence of its directors and officers, and the amount of its authorized and of its paid-up capital. It shall be organized under the laws of Colorado. If the applicant is not an incorporated company, the proposal shall set forth the names of the parties and such other facts as will enable the board to determine their financial ability to carry out the proposed undertaking or as may be required by the board.

(3) Nothing in this article shall be construed to prevent the entry and reclamation of land under this article by individuals, duly qualified either singly or acting together. The state board of land commissioners shall make such rules and regulations not inconsistent with the act of congress, or the rules and regulations of the department of the interior, as may be necessary to allow the acquisition of individual water rights for application to and reclamation of specific tracts of land, not exceeding one hundred sixty acres of land for each person. The requirements of this article as to plats, maps, examinations, reports, bonds, and contracts by such rules and regulations may be so modified as to effectuate and assist the reclamation and entry of land by individuals.

Source: L. 1895: p. 158, § 5. R.S. 08: § 5142. L. 11: p. 305, § 3. C.L. § 1127. CSA: C. 134, § 25. CRS 53: § 112-2-7. C.R.S. 1963: § 112-2-7.

36-3-108. Certified check with proposal. A certified check payable to the state board of land commissioners for a sum of not less than two hundred fifty dollars and not more than two thousand five hundred dollars, as may be determined by the rules of the board, shall accompany each such request and proposal. It shall be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the board. It shall be forfeited to the state in case of failure of the parties to enter into a contract with the state, in accordance with the provisions of this article.

Source: L. 1895: p. 158, § 6. R.S. 08: § 5143. C.L. § 1128. CSA: C. 134, § 26. CRS 53: § 112-2-8. C.R.S. 1963: § 112-2-8.

36-3-109. Application to state engineer - maps. The person, company of persons, associations, or incorporated companies, making application to the board for the selection of lands by the state, shall have filed with the state engineer an application to appropriate

water for the reclamation of the lands described in the request to the board. This application shall be of a form prescribed by the state engineer and shall be accompanied by two copies of the map of the land to be selected, which shall show accurately the location and dimensions of the proposed irrigation works. The maps of the lands and proposed irrigation shall be prepared in accordance with the regulations of the state engineer's office and rules of the department of the interior.

Source: L. 1895: p. 159, § 7. R.S. 08: § 5144. L. 11: p. 305, § 2. C.L. § 1129. CSA: C. 134, § 27. CRS 53: § 112-2-9. C.R.S. 1963: § 112-2-9.

36-3-110. Examination of proposal - report. (1) Immediately upon the receipt of any request and proposal as designated in section 36-3-107, it is the duty of the secretary of the board to examine the same and ascertain if it complies with the rules of the board and the regulations of the department of the interior. If it does not, it is to be returned for correction. If it does comply, it shall be submitted to the state engineer, who shall examine the same and make a written report to the board, stating whether the proposed works are feasible; whether the proposed diversion of the public waters of the state will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply; whether a permit to divert, store, and appropriate water through or by the proposed works has been approved by him; whether the capacity of the proposed works is adequate to reclaim the land described; and whether the maps filed comply with the requirements of his office and the regulations of the department of the interior. He shall determine whether the lands proposed to be irrigated are desert in character and such as may properly be set apart under the provisions of the act of congress referred to in section 36-3-103 and the rules and regulations of the department of the interior.

(2) When the state engineer is unable, from an examination of the maps and field notes submitted for his examination, to determine whether the proposed irrigation works are feasible and adequate or whether the proposed diversion of the public water is beneficial to public interest and whether the lands proposed to be irrigated are of such a character as to come under the provisions of the act of congress referred to in section 36-3-103, he shall report to the board and also report the estimated cost of a survey and examination. It is his duty to make, or cause to be made by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board when directed by the board to make such examination or survey.

Source: L. 1895: p. 160, § 8. R.S. 08: § 5145. C.L. § 1130. CSA: C. 134, § 28. CRS 53: § 112-2-10. C.R.S. 1963: § 112-2-10.

36-3-111. Board to consider proposal. On receipt of the report of the state engineer, the register shall place the request and proposal, with the engineer's report thereon, before the board for its consideration. In case of approval the board shall instruct the register to file in the local land office a request for the withdrawal of the land described in the proposal. No request on which the state engineer has reported adversely, either as to the water supply, the feasibility of the construction, capacity of the works, or as to the character of the lands sought to be irrigated, shall be approved by the board.

Source: L. 1895: p. 161, § 9. R.S. 08: § 5146. C.L. § 1131. CSA: C. 134, § 29. CRS 53: § 112-2-11. C.R.S. 1963: § 112-2-11.

36-3-112. Rejection of proposal - second proposal. In case the state engineer reports adversely upon the proposed irrigation works or where requests and proposals are not approved by the board, the board shall notify the parties making such proposals of such actions and the reasons therefor. Any party so notified shall have sixty days in which to submit another proposal; but the board, at its discretion, may extend the time to six months.

Source: L. 1895: p. 161, § 10. R.S. 08: § 5147. C.L. § 1132. CSA: C. 134, § 30. CRS 53: § 112-2-12. C.R.S. 1963: § 112-2-12.

36-3-113. Provision for contract - bond. Upon the withdrawal of the land by the department of the interior, it is the duty of the board to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions, character, and estimated cost of the proposed ditch, canal, or other irrigation work and state the price and terms upon which the state is to dispose of the lands to settlers and such other conditions and provisions as the board may direct. This contract shall not be entered into on the part of the state until the withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five percent of the estimated cost of the works and conditioned upon carrying out the provisions of the contract with the state.

Source: L. 1895: p. 161, § 11. R.S. 08: § 5148. C.L. § 1133. CSA: C. 134, § 31. CRS 53: § 112-2-13. C.R.S. 1963: § 112-2-13.

36-3-114. Time for construction - forfeiture. No proposal shall be considered by the board which requires a greater time than five years for the construction of the works. All proposals shall state that the work shall begin within six months from the date of contract; that at least one-tenth of the construction work shall be completed within two years from the date of said contract; that the construction shall be prosecuted diligently and continuously to completion; and that a cessation of work under the contract with the state for a period of six months after the second year, without the sanction of the board, will forfeit to the state all rights under said contract. The board, for good cause shown, shall extend the time of beginning or of completing the whole or any part of said construction work for a period commensurate with the difficulties of construction and the location of the proposed project. No extension of time shall be granted until after thirty days' notice, given by publication in at least one daily paper, published at the capital, and in at least one paper published in each county in which the project and the land sought to be watered thereby is located, of the time and place where such extension of time will be considered and opportunity afforded to all interested parties to appear and be heard.

Source: L. 1895: p. 162, § 12. R.S. 08: § 5149. L. 11: p. 300, § 1. C.L. § 1134. CSA: C. 134, § 32. CRS 53: § 112-2-14. C.R.S. 1963: § 112-2-14.

36-3-115. Failure in construction. (1) Upon the failure of any parties having contracts with the state for the construction of irrigation works to begin the same within the time specified by law, or to carry on work as provided in their contract, or to complete the same within the time or in accordance with the specifications of the contract with the board and the provisions of this article, it is the duty of the register to give such parties written notice of such failure. In the event the board has extended the time of the beginning or of completing the whole or any part of the construction work beyond the time set forth in the contract between the state and the party submitting the proposal, then the conditions and penalties of this section shall not apply to or be enforceable against the parties constructing the project until the time the extensions have expired.

(2) If, after a period of sixty days they have failed to proceed with the work or to conform to the specifications and conditions of their contract with the state, it is the duty of the board to declare the bond and contract of such parties forfeited to the state. The board shall notify the contractors of the forfeiture of the contract, by letter to the address given in the proposal, and give notice once a week for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period. Upon a day fixed, proposals will be received at the office of the register, at the capitol at Denver, for the purchase of the incompleting works and for the completion of the contract.

(3) The time for receiving bids shall be at least sixty days after the issuance of first notice of forfeiture. The money received from the sale of partially completed works under the provisions of section 36-3-114 shall first be applied to the expense incurred by the state

in their forfeiture and disposal to satisfy the bond and to the satisfaction, pro rata, of the adjudicated liens for labor or materials. The surplus, if any exists, shall be paid to the original contractors with the state.

Source: L. 1895: p. 162, § 13. R.S. 08: § 5150. L. 11: p. 301, § 2. C.L. § 1135. CSA: C. 134, § 33. CRS 53: § 112-2-15. C.R.S. 1963: § 112-2-15.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for the mechanics' lien law in general, see article 22 of title 38.

36-3-116. State not to be made liable. Nothing in this article shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

Source: L. 1895: p. 163, § 14. R.S. 08: § 5151. C.L. § 1136. CSA: C. 134, § 34. CRS 53: § 112-2-16. C.R.S. 1963: § 112-2-16.

36-3-117. Notice of land open for settlement. Immediately upon the withdrawal of any land for the state by the department of the interior, and the inauguration of work by the contractors, it is the duty of the board, by publication once each week, in one newspaper of the county in which the lands are situated, and in one newspaper at the state capital for a period of four weeks, to give notice that the land is open for settlement, and the price and terms upon which the land will be sold to settlers by the state.

Source: L. 1895: p. 163, § 15. R.S. 08: § 5152. C.L. § 1137. CSA: C. 134, § 35. CRS 53: § 112-2-17. C.R.S. 1963: § 112-2-17.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

36-3-118. Application to enter - requirements. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the board to enter any of the land in an amount not to exceed one hundred and sixty acres for any one person. The application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation, and settlement in accordance with the act of congress set out in section 36-3-103 and the laws of this state relating thereto and that the applicant has never received the benefit of the provisions of this article to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application, with the person, company, or association which has been authorized by the board to furnish water for the reclamation of the lands. If the applicant has at any time entered land under the provisions of this article, he shall so state in his application, together with the description, date of entry, and location of the land. The board shall file in its office the application and papers relating thereto and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as a partial payment on the land if the application is allowed. All certificates, when issued, shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be refunded to the applicant. The board shall dispose of all lands accepted by the state under the provisions of this article at a uniform price of fifty cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler.

Source: L. 1895: p. 163, § 16. R.S. 08: § 5153. C.L. § 1138. CSA: C. 134, § 36. CRS 53: § 112-2-18. C.R.S. 1963: § 112-2-18.

36-3-119. Disposition of funds. As provided in the act of congress set out in section 36-3-103, all moneys received by the board from the sale of lands selected under the provisions of this article shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the board and of the state engineer's office incurred in carrying out the provisions of this article. Such expenses shall be paid by the controller in the manner provided by law, upon vouchers duly approved by the board for the work performed under its direction and by the state engineer for all work performed by the state engineer's office; and any balance remaining over and above the expense necessary to carry out the provisions of this article shall constitute a trust fund in the hands of the state treasurer, to be used for the reclamation of other desert lands.

Source: L. 1895: p. 164, § 17. R.S. 08: § 5154. C.L. § 1139. CSA: C. 134, § 37. CRS 53: § 112-2-19. C.R.S. 1963: § 112-2-19.

36-3-120. Duty of settler - proof of settlement. (1) Within one year after any person, company of persons, association, or incorporated company authorized to construct irrigation works under the provisions of this article has notified the settlers under such works that it is prepared to furnish water under the terms of its contract with the state, the settlers shall cultivate and reclaim not less than one-sixteenth part of the land filed upon. Within two years after the notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon. Within three years from the date of notice, the settler shall appear before the register, or a judge or clerk of the district court in the county in which such land is situated, as designated by the register, and make final proof of reclamation, settlement, and occupation. The proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof, that he is an actual settler thereon, and that he has cultivated and irrigated not less than one-eighth part of said tract and such further proof, if any, as may be required by the regulations of the department of the interior or the board.

(2) The officer taking this proof is entitled to receive a fee, to be fixed by the state board of land commissioners, not to exceed five dollars and to be paid by the settler. It shall be in addition to the price paid to the state for the land. All proofs so received shall be submitted by the register to the board and shall be accompanied by the last final payment for the land, and, on the approval of the same by the board, they shall be forwarded to the secretary of the interior, with a request that a patent to the lands be issued to the state.

(3) When the state, through its state board of land commissioners, can make proof that such irrigation works have been completed for the reclamation of the lands so segregated and that an ample supply of water is actually furnished in a substantial ditch or canal or by artesian wells or reservoirs, for such purpose, the board shall apply for a patent to such lands, in the manner provided by the regulations of the department of the interior and in accordance with the provisions of the acts of congress relating thereto, without waiting for settlement or cultivation of such lands.

Source: L. 1895: p. 165, § 18. L. 07: p. 366, § 1. R.S. 08: § 5155. C.L. § 1140. CSA: C. 134, § 38. CRS 53: § 112-2-20. C.R.S. 1963: § 112-2-20. L. 64: p. 301, § 259.

36-3-121. Patent - water lien - foreclosure - deed. (1) Upon the issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settler upon such land. It is the duty of the board, under the signature of its president and attested by its secretary, to issue a patent to said lands from the state to the settler. All water rights acquired under the provisions of this article shall attach to and become appurtenant to the land as soon as the title passes from the United States to the state.

(2) Any person, company, association, or incorporated company furnishing water for any tract of land shall have a first and prior lien on the water right and land upon which the water is used, for all deferred payments for the water right. The lien shall be in all respects prior to any other liens created or attempted to be created by the owner and possessor of said

land. The lien shall remain in full force until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which the water right was acquired. The contract for the water right upon which the lien is founded shall be recorded in the office of the county clerk and recorder of the county where the land is situate.

(3) Upon default of any of the deferred payments secured by any lien under the provisions of this article, the person, company of persons, association, or incorporated company holding or owning said lien may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right. All sales shall be advertised in a newspaper of general circulation, published in the county where the land and water right is situate, for six consecutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county or such place as may be agreed upon by the terms of the contract. The sheriff of the county shall give all notices of sale and sell all property and make and execute a good and sufficient deed to the purchaser. At the sale, no person, company of persons, association, or incorporated company, owning or holding any lien, shall bid in or purchase any land or water right at a price less than the amount due on the deferred payment for the water right and land and the costs incurred in making the sale of said land and water right. The sheriff shall execute a certificate of sale as in case of sale on execution, subject in all respects to redemption as in such case; and if not redeemed the sheriff shall execute a deed as upon sale on execution.

Source: L. 1895: p. 166, § 19. R.S. 08: § 5156. C.L. § 1141. CSA: C. 134, § 39. CRS 53: § 112-2-21. C.R.S. 1963: § 112-2-21.

36-3-122. Requirements of maps. The maps of the lands selected under the provisions of this article shall show the location of the canals or other irrigation works approved in the contract with the board. All lands filed upon shall be subject to the right-of-way of such canals or irrigation works. The right-of-way shall embrace the entire width of the canal and such additional width as may be required for its proper operation and maintenance, the width of right-of-way to be specified in the contracts provided for in this article.

Source: L. 1895: p. 167, § 20. R.S. 08: § 5157. C.L. § 1142. CSA: C. 134, § 40. CRS 53: § 112-2-22. C.R.S. 1963: § 112-2-22.

36-3-123. Rules - report of construction company. The board shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry and payment of the land by settlers, and for the forfeiting of entry by settlers upon failure to comply with the provisions of this article. There shall be kept in the office of the board, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and the entries of land by settlers. It shall require from each person, company of persons, association, or incorporated company engaged in the construction of irrigation works, under the provisions of this article, an annual report, to be submitted to the board on or before November 1 of each year. This report shall show the number of water rights sold, the number of users of water under the irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the irrigation works is prepared to supply with water, and such other data as the board requires. The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony, or association of persons to furnish water for land settled upon and being reclaimed by themselves.

Source: L. 1895: p. 167, § 21. R.S. 08: § 5158. C.L. § 1143. CSA: C. 134, § 41. CRS 53: § 112-2-23. C.R.S. 1963: § 112-2-23.

36-3-124. Duties of employees - fees. (1) The board shall prescribe the duties of all its employees and shall collect the following fees: For filing each application, one dollar; for filing each proof, one dollar; for issuing each patent, one dollar; and for making certified

copies of papers or records, the same fee as provided for to be charged by the secretary of state for like services.

(2) A fee book shall be kept by the register, showing all fees received by him from any source whatever. The money collected for fees shall be paid to the state treasurer and credited to the fund created by virtue of this article.

Source: L. 1895: p. 168, § 22. R.S. 08: § 5159. C.L. § 1144. CSA: C. 134, § 42. CRS 53: § 112-2-24. C.R.S. 1963: § 112-2-24.

Cross references: For fees charged by secretary of state, see § 24-21-104; for other fees of the state board of land commissioners, see § 36-1-112.

36-3-125. Record of work - publication. The board shall maintain a detailed record of the names, location, and character of the irrigation works in process of construction; the acreage and legal subdivisions of land intended to be reclaimed; the estimated cost of said irrigation works; the price of water rights from such irrigation works; and the terms of payment for water rights and land. Publication of this information and of other material circulated in quantity outside the board shall be subject to the approval and control of the executive director of the department of natural resources.

Source: L. 1895: p. 168, § 23. R.S. 08: § 5160. C.L. § 1145. CSA: C. 134, § 43. CRS 53: § 112-2-25. C.R.S. 1963: § 112-2-25. L. 64: p. 164, § 120.

ARTICLE 4

Reclamation of State Lands

36-4-101.	Water rights for state lands.	36-4-106.	Board may proceed - how.
36-4-102.	Water tax - assessment.	36-4-107.	Departmental decisions.
36-4-103.	Payment by lessee or purchaser.	36-4-108.	Power of eminent domain.
36-4-104.	Board may improve state land.	36-4-109.	Parties - process.
36-4-105.	Water rights acquired - how.	36-4-110.	Interests vested in state.
		36-4-111.	Mandamus - injunction.
		36-4-112.	Attorney general to enforce.

36-4-101. Water rights for state lands. For the purpose of furnishing water and securing water rights for state lands, the state board of land commissioners is authorized to enter into contracts with any person, corporation, or irrigation district, providing for such irrigation, and to petition all such lands into irrigation districts at the time of or after the formation of such districts.

Source: L. 11: p. 211, § 1. C.L. § 1190. CSA: C. 134, § 89. CRS 53: § 112-4-1. C.R.S. 1963: § 112-4-1.

Cross references: For drainage of state lands, see article 30 of title 37; for inclusion of college and school lands in irrigation districts, see § 37-43-112.

36-4-102. Water tax - assessment. In case of any such land so petitioned into any irrigation district, the state board of land commissioners shall be considered in all respects as a freeholder, so long as said land remains unsold, but as soon as any of such land is sold, whether occurring prior or after the time such land is petitioned into any such irrigation district, the purchaser shall from the time of his purchase be considered as such freeholder and entitled to all the rights of a freeholder, whether or not he has completed his payments to the state board of land commissioners. In no case shall any interest or title of the state be made liable or subjected to any claim for any water tax, water assessment, or water charge by reason of the including of any of such state land in any irrigation district. All assessments or other payments for the cost of irrigating any such state land shall be paid by

the lessees or purchasers thereof. In case of any lease or sale, the lessee or purchaser shall pay to the register on or before March 1 of each year, in addition to his rental or amount due on his contract of purchase, as the case may be, such an additional amount as will equal the district assessment for an equal amount of land within the district or such greater amount as the board may require, and the register shall pay such additional amounts to the proper officer authorized by law to receive payment of assessments within such district to apply on the cost of furnishing water for such state land. When the title to any such state land passes from the state, the unpaid balance of the cost of furnishing water for the same shall at once become due and payable and attach as a lien thereon and be collected as an assessment of such irrigation district, in the same manner as assessments on other lands in the district.

Source: L. 11: p. 211, § 2. C.L. § 1191. CSA: C. 134, § 90. CRS 53: § 112-4-2. C.R.S. 1963: § 112-4-2.

Cross references: For irrigation district assessments, see § 37-41-124.

36-4-103. Payment by lessee or purchaser. In order to provide payment for such water rights for state lands, the state board of land commissioners may agree that, when any state land for which irrigation is provided is leased or sold, the lessee or purchaser, as the case may be, shall pay the agreed value therefor, at such times and in such amounts and in such proportion as may be agreed upon by the state board of land commissioners. The state board of land commissioners has power to secure, to any such person, corporation, or irrigation district so furnishing water for the irrigation of state lands, the payment of the cost of such water rights upon such lands being leased or sold by the lessee or purchaser thereof. In no case shall the state board of land commissioners have any power to use any of the school fund, either principal or interest, for any such purpose.

Source: L. 11: p. 212, § 3. C.L. § 1192. CSA: C. 134, § 91. CRS 53: § 112-4-3. C.R.S. 1963: § 112-4-3.

36-4-104. Board may improve state land. The state board of land commissioners is authorized to take, on behalf of and in the name of the state, as speedily as practicable, such action as may, in the judgment of the board, be necessary or desirable to irrigate and improve such lands belonging to the state, and lying in the San Luis valley and elsewhere, as may in the judgment of the board be susceptible of improvement by irrigation.

Source: L. 13: p. 588, § 1. C.L. § 1193. CSA: C. 134, § 92. CRS 53: § 112-4-4. C.R.S. 1963: § 112-4-4.

36-4-105. Water rights acquired - how. Such action may be taken by initiating such water rights and systems for reservoirs, canals, and conduits, or by the purchase of existing water rights, systems for reservoirs, canals, and conduits, or an interest therein, including pumping plants, highways, and such other accessories as may, in the judgment of the board, be necessary or desirable to the successful accomplishment of the objects of sections 36-4-104 to 36-4-112.

Source: L. 13: p. 588, § 2. C.L. § 1194. CSA: C. 134, § 93. CRS 53: § 112-4-5. C.R.S. 1963: § 112-4-5.

36-4-106. Board may proceed - how. In furtherance of such objects the board shall proceed in accordance with the irrigation laws of the state, insofar as the same are applicable, and may, if it elects, also proceed under the laws of the United States relating to the acquisition of such rights or easements over the public lands of the United States.

Source: L. 13: p. 588, § 3. C.L. § 1195. CSA: C. 134, § 94. CRS 53: § 112-4-6. C.R.S. 1963: § 112-4-6.

36-4-107. Departmental decisions. In case such procedure, or any part thereof, is under the laws of the United States, the board shall not be bound or required to accept or concur in the action or decision, or failure or delay in action or decision of any departmental or other officer, agent, or employee of the United States, if in the judgment of the board the same is not in good faith, or is for the mere purpose of delay, or is adverse to the legal, constitutional, or inherent rights of the state; nor shall the board, in any event, accept or concur in any such action, decision, grant, or permit which is, or purports to be, revocable by the United States or by any departmental or other officer, agent, or employee of the United States at its discretion or without reasonable cause and opportunity to be heard.

Source: L. 13: p. 589, § 4. C.L. § 1196. CSA: C. 134, § 95. CRS 53: § 112-4-7. C.R.S. 1963: § 112-4-7.

36-4-108. Power of eminent domain. In case of such procedure under the laws of the United States and in the event that any departmental or other officer, agent, or employee of the United States shall, in the judgment of the board, fail or refuse to act or decide within a reasonable time, or in bad faith, or for mere purpose of delay, or act or decide adversely to the legal, constitutional, or inherent rights of the state, upon any question involved and subject to his action or decision or shall obstruct, hinder, or interfere with the necessary occupancy or possession of the lands involved by the state, or any of its agents or employees, the board shall at once proceed to acquire the desired rights or easements, occupancy, or possession by invoking the power of eminent domain of the state. Such proceedings, including the right to enter upon the lands involved for the purpose of examination and survey, and the right of possession during the pendency of the action, and in all other respects, shall be as provided in articles 1 to 7 of title 38, C.R.S., in relation to eminent domain insofar as applicable and as supplemented and enlarged by sections 36-4-104 to 36-4-112.

Source: L. 13: p. 589, § 5. C.L. § 1197. CSA: C. 134, § 96. CRS 53: § 112-4-8. C.R.S. 1963: § 112-4-8.

Cross references: For additional provisions concerning condemnation of public lands belonging to the United States, see article 3 of title 38.

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

36-4-109. Parties - process. Such actions shall be brought in the name of the state as plaintiff, in the district court of any county in which the system of irrigation or any part thereof is located, or is to be located, and shall make as defendants thereto by proper name and official title, when known, such departmental and other officers, agents, and employees of the United States as have or claim to have jurisdiction, possession, charge, or control, or are exercising the same, over the lands involved or any part thereof, and such other officers, agents, and persons as the board may deem necessary or proper. The summons and other process shall be served and return made in the manner prescribed in articles 1 to 7 of title 38, C.R.S., or in any other manner required by the order of the court in the action.

Source: L. 13: p. 589, § 6. C.L. § 1198. CSA: C. 134, § 97. CRS 53: § 112-4-9. C.R.S. 1963: § 112-4-9.

36-4-110. Interests vested in state. Upon the completion of service and return of summons or other process and the expiration of the time required by law or the order of the court before whom the action is pending for the appearance of the defendants, such defendants and all interests of the United States in the lands involved shall be deemed to be

in court and subject to its jurisdiction, and thereafter, such proceedings shall be had as are required by the laws of the state, so far as applicable and as supplemented and enlarged by the provisions of sections 36-4-104 to 36-4-112, and, if the judgment of the court is in favor of the state, it shall vest in the state the rights and easements so adjudged over all public lands of the United States so involved, whether the same are reserved or unreserved, or are withdrawn temporarily or permanently for any purpose whatever, except those held for strictly governmental purposes, the jurisdiction over which has been ceded by the state to the United States.

Source: L. 13: p. 590, § 7. C.L. § 1199. CSA: C. 134, § 98. CRS 53: § 112-4-10. C.R.S. 1963: § 112-4-10.

36-4-111. Mandamus - injunction. Nothing in sections 36-4-104 to 36-4-112 shall prevent the board or the state from proceeding in aid of the actions provided in said sections, or independently thereof, by mandamus, injunction, or other appropriate action, civil or criminal, to acquire irrigation rights and easements upon the public domain for the benefit of the state or its citizens or to protect and defend the same.

Source: L. 13: p. 590, § 8. C.L. § 1200. CSA: C. 134, § 99. CRS 53: § 112-4-11. C.R.S. 1963: § 112-4-11.

36-4-112. Attorney general to enforce. The attorney general of the state is directed to give prompt and special attention to the enforcement of sections 36-4-104 to 36-4-112 and shall, when so requested by the board, give advice and take such legal action as in his judgment is necessary or proper and, to that end, may, if necessary, with the approval of the board and governor, employ not to exceed one lawyer or firm of lawyers to assist him therein, but no retainer shall be paid or other payment for such services made until after the same have been rendered or concurrently with such rendition.

Source: L. 13: p. 590, § 9. C.L. § 1201. CSA: C. 134, § 100. CRS 53: § 112-4-12. C.R.S. 1963: § 112-4-12.

ARTICLE 5

Sale and Improvement of State Lands

36-5-101.	Sale of state lands - servicemen.	36-5-108.	Certificate of purchase - cancellation.
36-5-102.	Sale - price per acre.	36-5-109.	Board to make available list of lands.
36-5-103.	Applicants - qualifications - value.	36-5-110.	Provision for prior purchasers.
36-5-104.	Appraisal.	36-5-111.	Person not applicant may bid - when.
36-5-105.	Amount of bid.	36-5-112.	Terms of sale.
36-5-106.	Payments - interest - expense.		
36-5-107.	Alienation of rights - restrictions.		

36-5-101. Sale of state lands - servicemen. The state lands, including school lands, excepting only such as may be subject to leases restricting the sale thereof and then only excepting during the duration of such restrictions, shall be sold at public sale in the manner provided by law for the sale of state lands, except as provided in this article, upon the application for the sale thereof executed in accordance with the terms of this article by any permanent resident of the state who intends to settle upon or improve the same, and who was regularly inducted, enlisted, or commissioned in the United States Army, Navy, or Marine Corps and who served therein for a period of more than one month between April 1, 1898, and July 4, 1902, or between April 6, 1917, and November 11, 1918, and was

honorably discharged, and who is now, or may at any time, prior to the filing of said application, become a citizen of the United States, and who complies with the provisions of this article.

Source: L. 21: p. 660, § 1. C.L. § 1202. CSA: C. 134, § 101. CRS 53: § 112-5-1. C.R.S. 1963: § 112-5-1.

Cross references: For sale of state lands by the state board of land commissioners, see § 36-1-124.

ANNOTATION

Estoppel in pais. When the state is misled by a person's original application, and alters its position by preparing for a legal sale of part of its lands, an estoppel *in pais* results against the applicant who seeks to change his position at a later date, and it is not essential to the application of estoppel that the applicant intend to mislead the state. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

This section provides which war veterans (who shall comply with the provisions of this article) are entitled to come under the act. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

If a prospective purchaser does not apply as a veteran for the sale of state lands, and the state proceeds in accordance with his application, he may not on the day of the sale petition as a veteran for a fractional sale of state lands.

Mowry v. Jackson, 140 Colo. 197, 343 P.2d 833 (1959).

If this section and § 36-5-103 are complied with, then § 36-5-104 provides that the land included in an application shall be appraised at its true value and no more. If said land shall be appraised at more than \$7,500, enough land, by legal subdivisions or such fractions thereof as the state board of land commissioners shall approve, shall be excluded by the applicant to bring the value of the remainder below \$7,500. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

No reasonable interpretation of § 36-5-104 requires the board to divide land on a sale date unless it has prior notice of a request in accordance with this section and § 36-5-103. *Mowry v. Jackson*, 140 Colo. 197 343 P.2d 833 (1959).

36-5-102. Sale - price per acre. All of the lands shall be sold at public sale at not less than three dollars and fifty cents per acre, to the highest and best bidder, and all general laws of this state and rules of the state board of land commissioners applicable to the sale and disposition of state lands not in conflict with the provisions of this article shall apply to and govern in all respects all sales and proceedings held under this article.

Source: L. 21: p. 661, § 2. C.L. § 1203. CSA: C. 134, § 102. CRS 53: § 112-5-2. C.R.S. 1963: § 112-5-2.

Cross references: For terms of sale, see § 36-5-112.

36-5-103. Applicants - qualifications - value. In addition to the matters contained in other applications for the sales of state lands, applications under this article shall contain and be accompanied by proof, satisfactory to the state board of land commissioners and conclusive beyond reasonable doubt, of the applicant's qualifications and the affidavit of the applicant that such application is made in good faith for the purpose of acquiring the land for himself only and for the purpose of settling upon or improving the same. No person shall be entitled or allowed to make more than one application under this article, and no application shall include more land than the applicant shall estimate to be worth seven thousand five hundred dollars. The lands purchased under this article need not be contiguous if the state board of land commissioners approves a sale of noncontiguous lands.

Source: L. 21: p. 661, § 3. C.L. § 1204. CSA: C. 134, § 103. CRS 53: § 112-5-3. C.R.S. 1963: § 112-5-3.

ANNOTATION

Estoppel in pais. When the state is misled by a person's original application, and alters its position by preparing for a legal sale of part of its lands, an estoppel *in pais* results against the applicant who seeks to change his position at a later date, and it is not essential to the application of estoppel that the applicant intended to mislead the state. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

Where an applicant does not comply with the veteran's statute in his original application, he cannot be heard to complain on the date set for sale, in accordance with his own request, that the rules of the sale should be changed. He has by his conduct estopped himself from claiming purchase rights to particular land as a veteran. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

If § 36-5-101 and this section are complied with, then § 36-5-104 provides that the land included in an application shall be appraised at its true value and no more. If said land shall be appraised at more than \$7,500, enough land, by legal subdivisions or such fractions thereof as the state board of land commissioners shall approve, shall be excluded by the applicant to bring the value of the remainder below \$7,500. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

No reasonable interpretation of § 36-5-104 requires the board to divide land on a sale date unless it has prior notice of a request in accordance with § 36-5-101 and this section. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

36-5-104. Appraisal. The land included in said application shall be appraised at its true value and no more. If said land is appraised at more than seven thousand five hundred dollars, enough land, by legal subdivisions or such fractions thereof as the state board of land commissioners shall approve, shall be excluded by the applicant to bring the value of the remainder below seven thousand five hundred dollars.

Source: L. 21: p. 661, § 4. C.L. § 1205. CSA: C. 134, § 104. CRS 53: § 112-5-4. C.R.S. 1963: § 112-5-4.

ANNOTATION

Estoppel in pais. When the state is misled by a person's original application, and alters its position by preparing for a legal sale of part of its lands, an estoppel *in pais* results against the applicant who seeks to change his position at a later date; and it is not essential to the application of estoppel that the applicant intended to mislead the state. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

Where an applicant does not comply with the veteran's statute in his original application, he cannot be heard to complain on the date

set for sale, in accordance with his own request, that the rules of the sale should be changed; he has by his conduct estopped himself from claiming purchase rights to particular land as a veteran. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

No reasonable interpretation of this section requires the board to divide land on a sale date unless it has prior notice of a request in accordance with §§ 36-5-101 and 36-5-103. *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959).

36-5-105. Amount of bid. No land shall be sold upon an application filed under this article unless the applicant shall bid therefor an amount at least equal to the appraised value thereof. Applicants and all other persons purchasing at said sale may bid therefor in any amount in excess of said appraised value.

Source: L. 21: p. 661, § 5. C.L. § 1206. CSA: C. 134, § 105. CRS 53: § 112-5-5. C.R.S. 1963: § 112-5-5.

36-5-106. Payments - interest - expense. Payment for the lands shall in all cases be made as provided for by law; but, if the person upon whose application said lands are offered for sale is the successful bidder, then, and not otherwise, the following terms for payment shall apply: The sum bid, or any part thereof, shall not be due until twenty years from the date of said sale, when it shall be paid in full. All or any portion of the sum bid may be payable at any semiannual period. All sums bid shall bear interest at six percent per

annum until paid. The interest shall be due and payable annually. Payment of the first three payments of said interest shall be deferrable at the option of such purchasing applicant until the end of the third year. The state board of land commissioners has the power, but shall be under no obligation, to grant other extensions of time for the payment of interest, and all such overdue interest shall draw interest at six percent until paid. The expenses of such sale shall in all cases be paid by the applicant.

Source: L. 21: p. 662, § 6. C.L. § 1207. CSA: C. 134, § 106. CRS 53: § 112-5-6. C.R.S. 1963: § 112-5-6.

Cross references: For terms of payment on the sale of state lands, see § 36-5-112.

36-5-107. Alienation of rights - restrictions. Until a patent for the land issues, the certificate of purchase issued at such sale and the interest acquired by any purchaser of the lands thereunder shall not be subject to transfer or alienation, lien, or mortgage, voluntary or involuntary, but the interest acquired shall descend to the heirs of the purchasers as in other cases. After the patent issues, the ownership and power of disposition of said lands shall be absolute. No patent shall issue prior to five years after the date of such sale, nor until said land is fully paid for.

Source: L. 21: p. 662, § 7. C.L. § 1208. CSA: C. 134, § 107. CRS 53: § 112-5-7. C.R.S. 1963: § 112-5-7.

36-5-108. Certificate of purchase - cancellation. The state board of land commissioners may cancel any certificate of purchase issued under this article because of a false or fraudulent application; a voluntary alienation, transfer, mortgage, or placing of a lien upon said land or the certificate of purchase; or for failure to settle upon or improve said land within a period of two years from the date of sale; or for failure to make payments of principal or interest as the same become due. Action shall be taken only after reasonable notice to the person named in said certificate, which action is subject to review by the district court of the county where such lands are situate, said proceeding for review to begin within sixty days from the date of the order of revocation.

Source: L. 21: p. 663, § 8. C.L. § 1209. CSA: C. 134, § 108. CRS 53: § 112-5-8. C.R.S. 1963: § 112-5-8.

36-5-109. Board to make available list of lands. The state board of land commissioners shall publish, subject to the approval and control of the executive director of the department of natural resources, a list of all lands in this state open to sale under this article, together with any available description matter or information regarding the same, and such information regarding the laws governing sales under this article as it and the executive director of the department of natural resources may deem advisable.

Source: L. 21: p. 663, § 9. C.L. § 1210. CSA: C. 134, § 109. CRS 53: § 112-5-9. C.R.S. 1963: § 112-5-9. L. 64: p. 166, § 122.

36-5-110. Provision for prior purchasers. Any person possessing the qualifications of an applicant as defined in section 36-5-101, who on or before April 7, 1921, purchased any state lands and who has not completed payment for the same, may, if he elects, file a declaration of acceptance of the provisions of this article and proof of his qualifications and shall thereafter be considered and dealt with as an applicant under this article and shall be subject to all the limitations and receive the benefit provided for in this article.

Source: L. 21: p. 663, § 10. C.L. § 1211. CSA: C. 134, § 110. CRS 53: § 112-5-10. C.R.S. 1963: § 112-5-10.

36-5-111. Person not applicant may bid - when. Any person possessing the qualifications of an applicant, as defined in section 36-5-101, may bid at the sale of any state lands held pursuant to any law governing the sale thereof. If at the time of the sale the applicant pays all the costs thereof and deposits with the state board of land commissioners the additional sum of fifty dollars and declares in writing that he is so qualified and intends to purchase the lands in accordance with the terms of this article, he shall, if he is a successful bidder at said sale, be granted thirty days within which to furnish proof of his qualifications to purchase. If he, within thirty days, furnishes the proof of his qualifications in accordance with the provisions of this article, he shall be deemed to have purchased the land upon an application under the provisions of this article and shall be subject to all the benefits and limitations of an applicant under this article, and a certificate of purchase shall then issue to him. In such case he may also purchase, upon an application under this article, lands additional to those purchased at such sale sufficient to make the total value of land purchased by him, in accordance with the provisions of this article, seven thousand five hundred dollars. If proof of said bidder's qualifications is furnished as provided in this section, said sum of fifty dollars shall be applied upon the purchase price of the lands. If proof of the bidder's qualifications is not furnished within thirty days, there shall be a resale of the lands upon the signed application, and said deposit of fifty dollars shall be paid by the state board of land commissioners to the person who was the next to the highest bidder at such sale.

Source: L. 21: p. 664, § 11. C.L. § 1212. CSA: C. 134, § 111. CRS 53: § 112-5-11. C.R.S. 1963: § 112-5-11.

36-5-112. Terms of sale. On all sales of state lands, the terms of payment shall be as follows: Not less than twenty-five percent of the purchase price shall be paid in cash at the time of the sale, and the balance shall be made payable upon an amortization plan based on interest at not less than four percent per annum and providing for the payment of semiannual installments sufficient in amount to extinguish such balance at the end of thirty-three years from date of sale; but, in cases where the total improvements on the land sold are in excess of forty percent of the total value of the land, the state board of land commissioners may, in its discretion, reduce the amount which shall be paid in cash at the time of the sale to ten percent of the purchase price. The purchaser shall have the privilege, on any installment date, of paying on his original obligation, in addition to the installment then due, the sum necessary to reduce the original obligation by one hundred dollars or any multiple thereof, but in such event, except when any such additional payment is sufficient to discharge the purchaser's entire debt, the balance remaining due from the purchaser shall remain amortized for the remainder of said thirty-three-year period on the same interest basis, with adjusted semiannual installments. Any certificates of purchase outstanding on lands sold on or before May 2, 1929, may, when the state board of land commissioners deems it advisable, and upon application of the holder thereof, be converted to certificates of purchase on the amortization plan. The board shall have the right to charge such fees under this article as it may deem reasonable.

Source: L. 29: p. 520, § 1. CSA: C. 134, § 112. CRS 53: § 112-5-12. L. 55: p. 685, § 1. C.R.S. 1963: § 112-5-12.

ARTICLE 6

Purchase by Veterans

36-6-101 and 36-6-102. (Repealed)

Source: L. 96: Entire article repealed, p. 564, § 26, effective April 24.

Editor’s note: This article was numbered as article 2 of chapter 112, C.R.S. 1963. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Forestry

ARTICLE 7

Forestry

PART 1		PART 2	
STATE BOARD OF LAND COMMISSIONERS		COLORADO STATE FOREST	
36-7-101.	Tree defined.	36-7-201.	Colorado state forest created - penalty.
36-7-102.	Trees not to be cut.	36-7-202.	Board to designate state forests.
36-7-103.	Disposition of timber on state lands.	PART 3	
36-7-104.	Rules regulating sale.	ROADLESS AREAS REVIEW TASK FORCE	
36-7-105.	Protection from fire.		
36-7-106.	Bond of person cutting trees.	36-7-301 to	
36-7-107.	District attorneys to prosecute.	36-7-304.	(Repealed)

PART 1

STATE BOARD OF LAND COMMISSIONERS

36-7-101. Tree defined. For the purposes of this article, the word “tree” means all vegetable growth of a woody texture of any size whatsoever. No lands contemplated in this law shall be leased for any purpose whatsoever that will destroy the tree growth.

Source: L. 01: p. 188, § 9. R.S. 08: § 2634. C.L. § 1221. CSA: C. 134, § 121. CRS 53: § 112-7-6. C.R.S. 1963: § 112-7-6.

36-7-102. Trees not to be cut. No trees needed to conserve the snows, ice, or water of any irrigation district shall be cut from any part of the public domain, except as provided in this article.

Source: L. 01: p. 185, § 1. R.S. 08: § 2626. C.L. § 1213. CSA: C. 134, § 115. CRS 53: § 112-7-1. C.R.S. 1963: § 112-7-1.

Cross references: For irrigation district laws, see articles 41 to 50 of title 37.

ANNOTATION

For treble damages for wrongfully cutting trees under a former statute, see *Hallack v. Stockdale*, 14 Colo. 198, 23 P. 340 (1890).

36-7-103. Disposition of timber on state lands. (1) The state board of land commissioners, referred to in this article as the “board”, is authorized to sell and otherwise dispose of timber on state lands; to secure the maximum possible amount therefrom, based upon cruised and appraised quantities thereon, location, accessibility, and market conditions; to issue permits of authority for timber cuttings; and to require cash deposits in

advance to apply on such timber-cutting permits. In cases in which the appraised value of timber involved in any proposed sale exceeds five thousand dollars, competitive bids shall be received by the board, after call for such bids has been advertised over a thirty-day period in three issues of a newspaper of general circulation in each county in which the timber is located.

(2) The board, when contracting with the Colorado state forest service, shall direct the service to use the appropriate methods necessary to ensure proper management of state trust lands whenever the board contracts for the disposition from state lands of timber that:

- (a) Has been infested with bark beetles; or
- (b) Is harvested from a forest whose health is otherwise in decline or from which the board anticipates declining revenues due to forest health factors.

Source: L. 37: p. 572, § 1. CSA: C. 134, § 119(1). CRS 53: § 112-7-2. C.R.S. 1963: § 112-7-2. L. 65: p. 922, § 3. L. 86: Entire section amended, p. 1078, § 1, effective March 26. L. 2011: Entire section amended, (SB 11-267), ch. 302, p. 1454, § 3, effective June 8.

Cross references: In 2011, this section was amended by the "Forest Health Act of 2011". For the short title and the legislative declaration, see section 1 of chapter 302, Session Laws of Colorado 2011.

36-7-104. Rules regulating sale. The board shall issue rules regulating the following: The sale of timber; timber protection of the young growth and the remaining stand in accordance with approved forestry practice; the filing of applications by purchasers; the issuing of permits of authority for cuttings; the cruising and appraisalment of timber quantities to be sold; and the expenses to be paid by the timber purchaser.

Source: L. 37: p. 573, § 2. CSA: C. 134, § 119(2). CRS 53: § 112-7-3. C.R.S. 1963: § 112-7-3.

36-7-105. Protection from fire. The board shall endeavor by every means at its disposal to protect the state's timber lands from fire menace and destructive timber fires. It shall cooperate with the United States forest service and otherwise for such protection when timber fires occur and hire all necessary help, laborers, or firefighters for the extinguishing of such fires. It shall construct within the state forest lands and on its exterior boundary lines locked fire booths containing necessary apparatus for fighting fires and post in conspicuous places within the area and outside on the exterior boundary lines of the state's forest lands, fire warnings and supply all modern fire fighting appliances and equipment necessarily required in approved forestry protection practice.

Source: L. 37: p. 573, § 3. CSA: C. 134, § 119(3). CRS 53: § 112-7-4. C.R.S. 1963: § 112-7-4.

36-7-106. Bond of person cutting trees. The state board of land commissioners shall require of all persons cutting trees upon state lands a bond in a sufficient amount, with good and approved security, for the carrying out in good faith of the provisions of part 2 of this article.

Source: L. 01: p. 188, § 8. R.S. 08: § 2633. C.L. § 1220. CSA: C. 134, § 120. CRS 53: § 112-7-5. C.R.S. 1963: § 112-7-5.

36-7-107. District attorneys to prosecute. The district attorneys of the various judicial districts of the state are directed to prosecute in the name of the state all cases arising under this article.

Source: L. 01: p. 190, § 17. R.S. 08: § 2642. C.L. § 1229. CSA: C. 134, § 129. CRS 53: § 112-7-8. C.R.S. 1963: § 112-7-8.

PART 2

COLORADO STATE FOREST

36-7-201. Colorado state forest created - penalty. (1) There is hereby created the Colorado state forest, to consist of a consolidated area of forest lands to be selected by the state board of land commissioners, through exchange with the United States government.

(2) The state board of land commissioners shall be authorized to exchange school, university, penitentiary, internal improvement, agricultural college, or any other state lands, either within or without the United States national forest, for other lands of at least equal area and appraised value, for the purpose of this section.

(3) The state forest lands, when so selected, from time to time, by formal resolution of the board, shall be set aside and sale of any parcel or part thereof prohibited. The withdrawal from sale of such lands shall be so designated upon the records and plat books of the board in accordance with this section.

(4) The board is authorized with the administration of the state forest lands; the leasing of the same for grazing, agricultural, mineral, and all other purposes to secure the maximum rental and revenue therefrom; to provide for and extend the practice of intensive forestry for its preservation; to sell, cut, and remove timber therefrom in accordance with good forestry practice; and to provide for protection against fire hazard.

(5) The board shall prescribe and issue rules and regulations for the administration and leasing of such lands and for the preservation, conservation, cutting, and sale of timber thereon; and for the improvement of such lands, the building of trails, roads, and otherwise, and for the expense thereof.

(6) The general assembly shall, from time to time, provide for the necessary expense of the administration and improvement of the state forest lands, by an appropriation for the operation of the board.

(7) Any person or corporation who shall trespass, commit depredations, or by negligence be responsible for any fires, or who shall cut or remove any timber from the state forest lands without authority so to do from the board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 31: pp. 350, 351, §§ 1-7. CSA: C. 134, § 131. CRS 53: § 112-7-10. C.R.S. 1963: § 112-7-10.

36-7-202. Board to designate state forests. The board is authorized to designate as state forests units of land suitable in character and size for such purposes and to administer such state forests for the sustained yield of forest and range products therefrom. All moneys collected or acquired by the board from fees derived from the lease or rental of surface rights for grazing, commercial, or recreational purposes of state school trust lands located in state forests shall be paid over to the state treasurer to be deposited and transferred as follows: Seventy-five percent to the public school income fund of the state and twenty-five percent to the county public school fund of the county in which the land from which the moneys were derived is located.

Source: L. 37: p. 937, § 6. CSA: C. 134, § 131(6). L. 41: p. 598, § 1. CRS 53: § 112-7-16. C.R.S. 1963: § 112-7-11. L. 79: Entire section amended, p. 1348, § 1, effective May 25.

Cross references: For the public school income fund, as credited to the state public school fund, see § 22-54-114; for the public school fund, see §§ 3 and 5 of art. IX, Colo. Const., and article 41 of title 22; for the county public school fund, see § 22-54-113.

PART 3

ROADLESS AREAS REVIEW TASK FORCE

36-7-301 to 36-7-304. (Repealed)

Editor's note: (1) This part 3 was added in 2005 and was not amended prior to its repeal in 2007. For the text of this part 3 prior to 2007, consult the 2006 Colorado Revised Statutes.

(2) Section 36-7-303 provided for the repeal of this part 3 upon notification from the governor that the governor had delivered management recommendations to the national forest service. The management recommendations were delivered on November 13, 2006. (See L. 2005, p. 1489, § 2.)

ARTICLE 8

Floating Timber on Stream**36-8-101 to 36-8-110. (Repealed)**

Source: L. 95: Entire article repealed, p. 200, § 18, effective April 13.

Editor's note: This article was numbered as article 8 of chapter 112, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Natural Areas

ARTICLE 10

Colorado Natural Areas**36-10-101 to 36-10-113. (Repealed)**

Source: L. 88: Entire article repealed, p. 1180, § 4, effective March 23.

Editor's note: This article was added in 1977. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning Colorado natural areas, see article 33 of title 33.

WEATHER MODIFICATION

ARTICLE 20

Weather Modification

Editor's note: This article was numbered as article 1 of chapter 151, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1972, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1972, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

36-20-101.	Short title.	36-20-105.	Administration.
36-20-102.	Legislative declaration.	36-20-106.	Advisory committee - ap-
36-20-103.	Declaration of rights.		pointment - duties - sunset
36-20-104.	Definitions.		review. (Repealed)

36-20-107.	Duties of the director.	36-20-118.	Operations affecting weather in other states.
36-20-108.	Powers of the director.	36-20-119.	Suspension - revocation - refusal to renew.
36-20-109.	Permit required - exemptions.	36-20-120.	Operation under permit. (Repealed)
36-20-110.	Issuance of license. (Repealed)	36-20-121.	Hearing required.
36-20-111.	License fee - expiration. (Repealed)	36-20-122.	Governmental immunity.
36-20-112.	Permit required - when issued.	36-20-123.	Legal recourse - liability - damages.
36-20-113.	Permit fee.	36-20-124.	Permit as defense in actions.
36-20-114.	Limits of permit.	36-20-125.	Judicial review.
36-20-115.	Modification of permit.	36-20-126.	Penalties.
36-20-116.	Scope of activity.	36-20-127.	Repeal of article.
36-20-117.	Reports of operator.		

36-20-101. Short title. This article shall be known and may be cited as the “Weather Modification Act of 1972”.

Source: L. 72: R&RE, p. 632, § 1. **C.R.S. 1963:** § 151-1-1.

36-20-102. Legislative declaration. The general assembly declares that the state of Colorado recognizes that economic benefits can be derived for the people of the state from weather modification. Operations, research, experimentation, and development in the field of weather modification shall therefore be encouraged. In order to minimize possible adverse effects, weather modification activities shall be carried on with proper safeguards, and accurate information concerning such activities shall be made available for purposes of regulation. While recognizing the value of research and development of weather modification techniques by governmental agencies, the general assembly finds and declares that the actual practice of weather modification, whether at public or private expense, is properly a commercial activity which the law should encourage to be carried out, whenever practicable, by private enterprise.

Source: L. 72: R&RE, p. 632, § 1. **C.R.S. 1963:** § 151-1-2.

36-20-103. Declaration of rights. The general assembly declares that the state of Colorado claims the right to all moisture suspended in the atmosphere which falls or is artificially induced to fall within its borders. Said moisture is declared to be the property of the people of this state, dedicated to their use pursuant to sections 5 and 6 of article XVI of the Colorado constitution and as otherwise provided by law. It is further declared that the state of Colorado also claims the prior right to increase or permit the increase of precipitation by artificial means for use in Colorado. The state of Colorado also claims the right to modify weather as it affects the people of the state of Colorado and to permit such modification by activity within Colorado.

Source: L. 72: R&RE, p. 632, § 1. **C.R.S. 1963:** § 151-1-3.

36-20-104. Definitions. As used in this article, unless the context otherwise requires:

- (1) Repealed.
- (2) “Director” means the executive director of the department of natural resources, as created by article 33 of title 24, C.R.S.
- (2.5) “Ground-based winter cloud seeding” means the seeding of clouds between the months of November through May of each year by the use of ground generation equipment.
- (3) (Deleted by amendment, L. 96, p. 966, § 1, effective July 1, 1996.)
- (4) “Operation” means the performance in Colorado of any activity to attempt to modify or having the effect of modifying natural weather conditions other than usual and customary activities not conducted primarily for weather modification and having only a minor effect on natural weather conditions.

(4.5) "Operator" means any person who conducts a weather modification operation in Colorado.

(5) "Permit" means a certification of project approval to conduct a specific weather modification operation within the state under the conditions and within the limitations required and established under the provisions of this article.

(6) "Person" has the same meaning as that provided in section 2-4-401 (8), C.R.S.

(7) "Publication" or "publish" means a minimum of at least two consecutive weekly legal notices in at least one newspaper of general circulation in the county or counties, or portions thereof, included within the proposed operation. It shall not be necessary that notice be made on the same day of the week in each of the two weeks, but not less than one week shall intervene between the first publication and the last publication, and notice shall be complete on the date of the last publication. If there is no such newspaper, notice shall be by posting in at least three public places within the county, or portions thereof, included within a proposed operation. Publication of notices provided for in this article may be made, at the discretion of the director, by notices broadcast over any or all standard radio, FM radio, television stations, and cable television. Such broadcast notices shall make reference to locations or publications wherein details of the subject matter of the notices are located.

(8) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimentation and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes both in the laboratory and in the atmosphere.

(9) "Research and development operation" or "research and development project" means an operation which is conducted solely to advance scientific and technical knowledge in weather modification. Research and development operations may be conducted by state or federal agencies, state institutions of higher education, and bona fide nonprofit research corporations or by commercial operators under contracts with such entities solely for research purposes.

(10) "Weather modification" means any program, operation, or experiment intended to induce changes in the composition, behavior, or dynamics of the atmosphere by artificial means.

Source: L. 72: R&RE, p. 633, § 1. C.R.S. 1963: § 151-1-4. L. 73: p. 1535, § 1. L. 92: (1) repealed, p. 955, § 8, effective March 19; (2.5) added, p. 1912, § 1, effective July 1. L. 96: (3) and (6) amended and (4.5) added, p. 966, § 1, effective July 1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

36-20-105. Administration. (1) The executive director of the department of natural resources is hereby charged with the administration of this article.

(2) The director shall issue all permits provided for in this article. The director is hereby empowered to issue rules and regulations the director finds necessary to facilitate the implementation of this article, and the director is authorized to execute and administer all other provisions of this article pursuant to the powers and limitations contained in this article.

Source: L. 72: R&RE, p. 634, § 1. C.R.S. 1963: § 151-1-5. L. 96: (2) amended, p. 966, § 2, effective July 1.

36-20-106. Advisory committee - appointment - duties - sunset review. (Repealed)

Source: L. 72: R&RE, p. 634, § 1. C.R.S. 1963: § 151-1-6. L. 86: (4) added, p. 425, § 61, effective March 26. L. 87: (2)(a) amended, p. 975, § 96, effective March 13. L. 92: Entire section repealed, p. 956, § 9, effective March 19.

36-20-107. Duties of the director - rules - repeal. (1) The director shall promulgate rules, in accordance with article 4 of title 24, C.R.S., necessary to effectuate the purposes of this article.

(2) Repealed.

(3) (a) No later than June 30, 2012, the director, acting by rule, shall ensure that all rules established pursuant to this article are up to date and consistent with this article.

(b) This subsection (3) is repealed, effective January 1, 2013.

Source: L. 72: R&RE, p. 635, § 1. C.R.S. 1963: § 151-1-7. L. 73: p. 1535, § 2. L. 92: (1) and (2)(a) amended, p. 957, § 10, effective March 19; (2)(b) amended, p. 1912, § 2, effective July 1. L. 96: (2) repealed, p. 967, § 3, effective July 1. L. 2011: (1) amended and (3) added, (SB 11-090), ch. 301, p. 1449, § 4, effective June 8.

36-20-108. Powers of the director. (1) The director may issue permits applicable to specific weather modification operations. For each operation, said permit shall describe the specific geographic area authorized to be affected and shall provide a specific time period during which the operation may continue, which period may be discontinuous but for operations other than ground-based winter cloud seeding may not have a total duration exceeding one calendar year from the day of its issuance. A separate permit shall be required for each operation. Permits for ground-based winter cloud seeding shall have a duration of five years. If a permit for a ground-based winter cloud seeding operation is renewed, the second permit shall have a duration of five years and any third or subsequent permit shall have a duration of ten years. The director shall issue only one active permit for activities in any geographic area if two or more projects therein might adversely interfere with each other.

(2) The director shall, by regulation or order, establish standards and instructions to govern the carrying out of research and development or commercial operations in weather modification that the director considers necessary or desirable to minimize danger to land, health, safety, people, property, or the environment.

(3) (a) The director may make any studies or investigations, obtain any information, and hold any hearings the director considers necessary or proper to assist the director in exercising the director's power or administering or enforcing this article or any regulations or orders issued under this article.

(b) All hearings conducted under this article shall be conducted pursuant to the provisions of this article and article 4 of title 24, C.R.S., and the director or the director's designee shall conduct any hearing required by this article or the director may, by the director's own action, appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel, to conduct any hearing required by this article. Any hearing shall be conducted under the provisions and within the limitations of article 4 or title 24, C.R.S., and this article.

(4) (a) The director may, upon approval of the governor, represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification, but, before any such compacts may be implemented, the consent of the general assembly must be obtained.

(b) The director may represent the state and assist counties, municipalities, and public agencies in contracting with commercial operators for the performance of weather modification or cloud-seeding operations. Counties, municipalities, and other public agencies of this state are hereby granted the authority to contribute to and participate in weather modification.

(5) In order to assist in expanding the theoretical and practical knowledge of weather modification, the director may participate in and promote continuous research and development in:

(a) The theory and development of weather modification, including processes, materials, ecological effects, and devices related to such matters;

(b) The utilization of weather modification for agricultural, industrial, commercial, municipal, recreational, and other purposes;

(c) The protection of life and property and the environment during research and operational activities.

(6) The director may conduct and may contract for research and development activities relating to the purposes of this article.

(7) The director, subject to limits of the department of natural resources' appropriation, may hire any technical or scientific experts or any staff deemed necessary to carry out the provisions of this article.

(8) Subject to any limitations imposed by law, the department of natural resources, acting through the director, may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted, or subject to any limitations provided by law, the director may:

(a) Spend it for the administration of this article;

(b) By grant, contract, or cooperative arrangement, use the money to encourage research and development by a public or private agency; or

(c) Use the money to contract for weather modification operations.

(9) The director shall prescribe those measurements reasonably necessary to be made prior to and during all operations to determine the probable effects of an operation.

Source: L. 72: R&RE, p. 636, § 1. C.R.S. 1963: § 151-1-8. L. 76: (3)(b) amended, p. 587, § 27, effective May 24. L. 78: (3)(b) amended, p. 274, § 99, effective May 23. L. 87: (3)(b) amended, p. 975, § 97, effective March 13. L. 92: (1), (3)(b), and (9) amended, p. 957, § 11, effective March 19; (1), (2), and (3)(a) amended, p. 1913, § 3, effective July 1. L. 95: (3)(b) amended, p. 666, § 105, effective July 1. L. 96: (1) and (3)(b) amended, p. 967, § 4, effective July 1.

36-20-109. Permit required - exemptions. (1) No person may engage in activities for weather modification and control without a weather modification permit issued by the director; nor may any person engage in any activities in violation of any term or condition of the permit.

(2) The director, to the extent he considers exemptions practical, may provide by regulation for exempting the following activities from the fee requirements of this article:

(a) Research, development, and experiments conducted by state and federal agencies, state institutions of higher education, and bona fide nonprofit research organizations;

(b) Laboratory research and experiments; and

(c) Activities of an emergency nature for protection against fire, frost, hail, sleet, smog, fog, or drought.

Source: L. 72: R&RE, p. 637, § 1. C.R.S. 1963: § 151-1-9. L. 96: (1) amended, p. 968, § 5, effective July 1.

36-20-110. Issuance of license. (Repealed)

Source: L. 72: R&RE, p. 637, § 1. C.R.S. 1963: § 151-1-10. L. 96: Entire section repealed, p. 968, § 6, effective July 1.

36-20-111. License fee - expiration. (Repealed)

Source: L. 72: R&RE, p. 638, § 1. C.R.S. 1963: § 151-1-11. L. 96: Entire section repealed, p. 968, § 7, effective July 1.

36-20-112. Permit required - when issued. (1) The director, in accordance with regulations, shall issue a weather modification permit to each applicant who:

(a) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(b) Pays the permit fee, if applicable;

(c) Furnishes proof of financial responsibility adequate to meet obligations reasonably likely to be attached to or result from the proposed weather modification operation. Such proof of financial responsibility may, but at the discretion of the director shall not be required to, be shown by presentation of proof of a prepaid insurance policy with an insurance company licensed to do business in Colorado, which insurance policy shall insure liabilities in an amount set by the director and provide a cancellation clause with a

thirty-day notice to the director, or by filing with the director an individual, schedule, blanket, or other corporate surety bond in an amount approved by the director. The director shall not require proof of financial responsibility in excess of the limitations imposed by section 24-10-114, C.R.S., from any political subdivision of the state authorized to conduct ground-based winter cloud seeding weather modification activities pursuant to this article.

(d) Submits a complete operational plan for each proposed project prepared by the operator in control which includes a specific statement of objectives, a map of the proposed operating area which specifies the primary target area and shows the area reasonably expected to be affected, the name and address of the operator, the nature and object of the intended operation, the person or organization on whose behalf it is to be conducted, and a statement showing any expected effect upon the environment and methods of determining and evaluating the same. This operational plan shall be placed on file with the director and with any other agent as the director may require.

(e) Publishes a notice of intent to modify weather in the counties to be affected by the weather modification program before the operator secures a permit and before beginning operations. The published notice shall designate the primary target area and indicate the general area which might be affected. It shall also indicate the expected duration and intended effect and state that complete details are available on request from the operator or the director or from the other agent specified by the director. The publication shall also specify a time and place, not more than one week following the completion of publication, for a hearing on the proposed project. Proof of publication shall be furnished to the director by the operator.

(f) Receives approval under the criteria set forth in subsection (3) of this section;

(g) Provides the information that is requested by the director regarding the qualifications, education, and experience of the operator.

(2) Before a permit may be issued, the director or his authorized agents shall hold a public hearing on the proposed project. Said hearing shall be held in a place within a reasonable proximity of the area expected to be affected by the proposed operation.

(3) No permit may be issued unless the director determines, based on the information provided in the operational plan and on the testimony provided at the public hearing:

(a) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(b) That the project is reasonably expected to benefit the people in said area or benefit the people of the state of Colorado;

(c) That the project is scientifically and technically feasible;

(d) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(e) That the project does not involve a high degree of risk of substantial harm to land, people, health, safety, property, or the environment;

(f) That the project is designed to include adequate safeguards to prevent substantial damage to land, water rights, people, health, safety, or to the environment;

(g) That the project will not adversely affect another project; and

(h) That the project is designed to minimize risk and maximize scientific gains or economic benefits to the residents of the area or the state.

Source: L. 72: R&RE, p. 638, § 1. C.R.S. 1963: § 151-1-12. L. 92: (1)(a) and (1)(c) amended, p. 1914, § 4, effective July 1. L. 96: IP(1), (1)(a), (1)(d), (1)(e), (3)(a), (3)(c), and (3)(d) amended and (1)(g) added, p. 969, § 8, effective July 1.

36-20-113. Permit fee. (1) The fee for each permit or the renewal thereof under section 36-20-114 shall be at least one hundred dollars. If the operation is a commercial project, the director shall set a fee that is sufficient to pay the direct costs of review of the permit application, public hearings regarding the application, and monitoring of permit operations under this article. Said fees are intended to provide at least a portion of the moneys necessary to administer this article. Said fees shall be deposited into the Colorado water conservation board construction fund created in section 37-60-121, C.R.S. Said fees are hereby continuously appropriated to the department of natural resources, for allocation to the Colorado water conservation board for purposes established by this section.

(2) (Deleted by amendment, L. 2006, p. 957, § 16, effective July 1, 2006.)

Source: L. 72: R&RE, p. 639, § 1. C.R.S. 1963: § 151-1-13. L. 96: Entire section amended, p. 970, § 9, effective July 1. L. 98: Entire section amended, p. 1342, § 68, effective June 1. L. 2006: Entire section amended, p. 957, § 16, effective July 1. L. 2007: (1) amended, p. 1518, § 21, effective May 31.

36-20-114. Limits of permit. (1) Except for ground-based winter cloud seeding, a separate permit is required annually for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. Subject to the provisions of subsection (2) of this section, a permit may be granted for more than one year's duration. A permit for ground-based winter cloud seeding shall be issued for a period of five years. If a permit for a ground-based winter cloud seeding operation is renewed, the second permit shall have a duration of five years and any third or subsequent permit shall have a duration of ten years.

(2) The director may conditionally approve a project other than ground-based winter cloud seeding for a continuous time period in excess of one year's duration. Permits for such operations must be renewed annually. In approving the renewal of a permit for a continuous program, the director may waive the procedures for initial issuance of a permit in section 36-20-112 and, upon review and approval of the project's operational record, the director may issue a renewed permit for the operation to continue. In such instances, the fees imposed pursuant to section 36-20-113 may be prorated and paid on an annual basis.

(3) A project permit may be granted by the director without prior publication of notice by the operator in cases of fire, frost, hail, sleet, smog, fog, drought, or other emergency. In such cases, publication of notice shall be performed as soon as possible and shall not be subject to the time limits specified in this article or in article 4 of title 24, C.R.S.

Source: L. 72: R&RE, p. 639, § 1. C.R.S. 1963: § 151-1-14. L. 92: (2) amended, p. 957, § 12, effective March 19; entire section amended, p. 1914, § 5, effective July 1. L. 96: Entire section amended, p. 970, § 10, effective July 1.

36-20-115. Modification of permit. (1) The director may revise the terms and conditions of a permit if:

(a) The operator is first given notice and a reasonable opportunity for a hearing on the need for a revision; and

(b) It appears to the director that a revision is necessary to protect the health or property of any person or to protect the environment.

(2) If it appears to the director that an emergency situation exists or is impending which could endanger life, property, or the environment, the director may, without prior notice or a hearing, immediately modify the conditions of a permit or order temporary suspension of the permit on the director's own order. The issuance of such order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions of a permit shall be grounds for immediate revocation of the permit.

(3) It shall be the responsibility of the operator conducting any operation to notify the director of any emergency which can reasonably be foreseen or of any existing emergency situations in subsection (2) of this section which might in any way be caused or affected by the weather modification operation. Failure by the operator to so notify the director of any such existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the director, for revocation of the permit for operation.

Source: L. 72: R&RE, p. 640, § 1. C.R.S. 1963: § 151-1-15. L. 96: (1)(a), (2), and (3) amended, p. 971, § 11, effective July 1.

36-20-116. Scope of activity. Once a permit is issued, the operator shall confine his or her activities within the limits of time and area specified in the permit, except to the extent

that the limits are modified by the director. The operator shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the director.

Source: L. 72: R&RE, p. 640, § 1. C.R.S. 1963: § 151-1-16. L. 96: Entire section amended, p. 971, § 12, effective July 1.

36-20-117. Reports of operator. (1) The director may promulgate rules requiring any operator who has been issued a weather modification permit to file certain reports regarding operations conducted under the permit.

(2) (Deleted by amendment, L. 96, p. 971, § 13, effective July 1, 1996.)

(3) All reports filed under the provisions of this section are declared to be public records subject to the provisions and limitations of part 2 of article 72 of title 24, C.R.S.

Source: L. 72: R&RE, p. 640, § 1. C.R.S. 1963: § 151-1-17. L. 73: p. 1536, § 3. L. 92: (2) amended, p. 958, § 13, effective March 19; entire section amended, p. 1915, § 6, effective July 1. L. 96: Entire section amended, p. 971, § 13, effective July 1.

36-20-118. Operations affecting weather in other states. Weather control operations may not be carried on in Colorado for the purpose of affecting weather in any other state if that state prohibits such operations to be carried on in that state for the benefit of Colorado or its inhabitants.

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-18.

36-20-119. Suspension - revocation - refusal to renew. (1) The director may suspend or revoke a permit if it appears that the operator no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this article.

(2) The director may refuse to issue another permit to any applicant who has failed to comply with any provision of this article.

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-19. L. 96: Entire section amended, p. 972, § 14, effective July 1.

36-20-120. Operation under permit. (Repealed)

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-20. L. 96: Entire section repealed, p. 972, § 15, effective July 1.

36-20-121. Hearing required. (1) Except as provided in section 36-20-115, the director may not suspend or revoke a permit without first giving the operator notice and a reasonable opportunity to be heard with respect to the grounds for the director's proposed action.

(2) Said hearing shall be conducted by an administrative law judge.

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-21. L. 87: (2) amended, p. 976, § 98, effective March 13. L. 96: (1) amended, p. 973, § 16, effective July 1. L. 2001: (2) amended, p. 1277, § 45, effective June 5.

36-20-122. Governmental immunity. The state and its agencies, counties, and municipalities, all other public entities (as defined in section 24-10-103 (5), C.R.S.) within the state, and the officers and employees thereof are immune from liability resulting from any weather modification operations approved or conducted by them under the provisions and limitations of this article. Nothing in this section shall be construed as providing any broader waiver of immunity than is provided by article 10 of title 24, C.R.S.

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-22. L. 77: Entire section R&RE, p. 1630, § 1, effective May 20.

36-20-123. Legal recourse - liability - damages. (1) The mere dissemination of materials and substances into the atmosphere pursuant to an authorized project shall not give rise to the contention or concept that such use of the atmosphere constitutes trespass or involves an actionable or enjoined public or private nuisance.

(2) (a) Failure to obtain a permit before conducting an operation, or any actions which knowingly constitute a violation of the conditions of a permit, shall constitute negligence per se.

(b) The director may order any person who is found to be conducting a weather modification operation without a permit to cease and desist from said operation. Any person who fails to obey said order commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 72: R&RE, p. 641, § 1. C.R.S. 1963: § 151-1-23. L. 79: (2)(b) amended, p. 1349, § 1, effective July 1. L. 89: (2)(b) amended, p. 849, § 131, effective July 1. L. 96: (2) amended, p. 973, § 17, effective July 1. L. 2002: (2)(b) amended, p. 1552, § 331, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

36-20-124. Permit as defense in actions. The fact that a person was issued a permit under this article, or that the person has complied with the requirements established by the director pursuant to this article, is not admissible as a defense in actions for damages or injunctive relief brought against the person.

Source: L. 72: R&RE, p. 642, § 1. C.R.S. 1963: § 151-1-24. L. 96: Entire section amended, p. 973, § 18, effective July 1.

36-20-125. Judicial review. Judicial review of any action of the director may be had in accordance with the provisions of section 24-4-106, C.R.S.

Source: L. 72: R&RE, p. 642, § 1. C.R.S. 1963: § 151-1-25. L. 2001: Entire section amended, p. 1277, § 46, effective June 5.

36-20-126. Penalties. (1) (a) Any person responsible for conducting a weather modification operation without first having procured the required permit and any person who contracts with or pays another person known to be without a permit to conduct a weather modification operation commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(b) Any person operating an aircraft conducting a weather modification operation, which operation has not received the required permit, shall have this violation reported to the United States department of transportation, federal aviation administration, by the director.

(2) Any person who makes a false statement in the application for a permit, who fails to file any report as required by this article, or who violates any other provisions of this article, except as otherwise provided in section 36-20-123 and subsection (1) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each such violation shall be a separate offense.

Source: **L. 72:** R&RE, p. 642, § 1. **C.R.S. 1963:** § 151-1-26. **L. 79:** Entire section amended, p. 1349, § 2, effective July 1. **L. 89:** (1)(a) amended, p. 850, § 132, effective July 1. **L. 96:** (1)(a) and (2) amended, p. 973, § 19, effective July 1. **L. 2002:** (1)(a) amended, p. 1552, § 332, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(a), see section 1 chapter 318, Session Laws of Colorado 2002.

36-20-127. Repeal of article. This article is repealed, effective September 1, 2018. Prior to such repeal, the function of the issuance of permits for specific weather modifications operations through the director shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 91:** Entire section added, p. 690, § 70, effective April 20. **L. 94:** Entire section amended, p. 1457, § 10, effective May 25. **L. 96:** Entire section amended, p. 974, § 20, effective July 1. **L. 2011:** Entire section amended, (SB 11-090), ch. 301, p. 1449, § 3, effective June 8.

